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Contents

Federal Register

Vol. 82, No. 21

Thursday, February 2, 2017

Coast Guard
NOTICES
Meetings:
National Offshore Safety Advisory Committee; Teleconference, 9070–9071

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
RULES
Safety Standard Mandating ASTM F963 for Toys, 8989–8993
PROPOSED RULES
Amendments to Fireworks Regulations, 9012–9034

Copyright Office, Library of Congress
RULES
Removal of Personally Identifiable Information from Registration Records, 9004–9009

Defense Department
NOTICES
Privacy Act; Systems of Records, 9060–9061
TRICARE:
Civilian Health and Medical Program of Uniformed Services; Fiscal Year 2017 Diagnosis Related Group Updates, etc., 9061–9063

Energy Department
See Federal Energy Regulatory Commission
RULES
Energy Conservation Programs:
Test Procedures for Central Air Conditioners and Heat Pumps, 8985
Test Procedures for Compressors, 8985–8986

Environmental Protection Agency
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Alaska; Fairbanks North Star Borough; 2006 PM2.5 Moderate Area Plan, 9035–9054

Federal Communications Commission
RULES
Transition Progress Report Form and Filing Requirements for Stations Eligible for Reimbursement from TV Broadcast Relocation Fund, 9009–9011
NOTICES
Termination of Dormant Proceedings, 9069–9070

Federal Election Commission
RULES
Civil Monetary Penalties Annual Inflation Adjustments, 8986–8989
NOTICES
Meetings; Sunshine Act, 9070

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
FEMA Preparedness Grants: Emergency Management Performance Grant, 9071–9072

Federal Energy Regulatory Commission
RULES
Availability of Certain North American Electric Reliability Corporation Databases to Commission, 8993–8994
Disturbance Control Standard:
Contingency Reserve for Recovery from Balancing Contingency Event Reliability Standard, 8994–9004
PROPOSED RULES
Foundation for Resilient Societies:
Petition for Rulemaking, 9034–9035
NOTICES
Combined Filings, 9063–9064, 9067
Environmental Assessments; Availability, etc.:
Valley Crossing Pipeline, LLC, Border Crossing Project, 9067–9069
Environmental Impact Statements; Availability, etc.:
Cheniere Midstream Holdings, Inc.; Midcontinent Supply Header Interstate Pipeline Project, 9064–9067

Financial Crimes Enforcement Network
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Suspicious Activity Reports Electronic Data Fields, 9109–9114

Foreign-Trade Zones Board
NOTICES
Production Activities; Authorizations:
Airbus Americas, Inc., Mobile, AL; Commercial Passenger Jet Aircraft Production, 9055

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
Charter Renewals:
Critical Infrastructure Partnership Advisory Council, 9072–9073
Meetings:
Data Privacy and Integrity Advisory Committee, 9073–9074

Indian Affairs Bureau
NOTICES
Meetings:
Water Infrastructure Improvements for Nation Act; Indian Dam Safety, 9074
Tribal Consultations:
Water Infrastructure Improvements for Nation Act; Indian Dam Safety, 9074–9075

Interior Department
See Indian Affairs Bureau

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Softwood Lumber Products from Canada, 9055–9056
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain New Pneumatic Off-the-Road Tires from India, 9056–9058
Meetings:
Civil Nuclear Trade Advisory Committee, 9056

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof, 9075–9076

Justice Department
NOTICES
Proposed Consent Decrees under the Clean Air Act, 9076–9077
Proposed Consent Decrees:
Clean Water Act, 9076

Library of Congress
See Copyright Office, Library of Congress

National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9058–9059
Meetings:
Fisheries of Gulf of Mexico and South Atlantic; Southeast Data, Assessment and Review (SEDAR), 9059–9060
North Pacific Fishery Management Council, 9060
Pacific Fishery Management Council, 9060

National Science Foundation
NOTICES
Meetings; Sunshine Act, 9077

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 9077

Nuclear Regulatory Commission
NOTICES
Exemptions and Combined License Amendments:
South Carolina Electric and Gas Co., Virgil C. Summer Nuclear Station, Units 2 and 3, 9080–9081
Master Decommissioning Trusts:
Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 3, LLC, Indian Point Nuclear Generating Unit No. 3; and Entergy Nuclear FitzPatrick, LLC, James A. FitzPatrick Nuclear Power Plant, 9077–9079
Meetings:
Advisory Committee on Reactor Safeguards, 9079–9082

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
More Information Needed for Person Named Below, 9082

Postal Regulatory Commission
NOTICES
Meetings:
New Postal Products, 9082–9083

Presidential Documents
ADMINISTRATIVE ORDERS
Defense and National Security:
Islamic State of Iraq and Syria; Strategy for Defeating (Memorandum of January 28, 2017), 9125–9126
Government Agencies and Employees:
National Security Council and Homeland Security Council; Organizational Changes (Memorandum of January 28, 2017), 9117–9123

Securities and Exchange Commission
NOTICES
Applications for Deregistration, 9087–9089
Applications:
Allstate Assurance Co., et al, 9083–9085
Self-Regulatory Organizations; Proposed Rule Changes:
BOX Options Exchange, LLC, 9101–9103
ICE Clear Credit, LLC, 9086–9087, 9089–9090
International Securities Exchange, LLC, 9090–9101
Investors Exchange, LLC, 9083

Small Business Administration
NOTICES
Major Disaster Declarations:
Georgia, 9103–9105
Mississippi, 9104
Oregon, 9104

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9105–9106
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Exchange Programs Alumni Website Registration, 9105

Surface Transportation Board
NOTICES
Acquisition Exemptions:
West Branch Intermediate Holdings, LLC and Continental Rail, LLC; Cimarron Valley Railroad, L.C., Clarkdale Arizona Central Railroad, LC, Wyoming and Colorado Railroad Co., Inc., 9109
Acquisitions and Operation Exemptions:
New Mexico Central Railroad, LLC; Southwestern Railroad, Inc., Whitewater Division, 9108–9109
Continuance in Control; Exemptions:
West Branch Intermediate Holdings, LLC and Continental Rail LLC; New Mexico Central Railroad, LLC, 9106–9107
Corporate Family Transactions:
David L. Durbano, Wyoming and Colorado Railroad Co., Inc., and Saratoga Railroad, LLC, 9107–9108
Temporary Trackage Rights Exemptions:
New Orleans Public Belt Railroad; Illinois Central Railroad Co., 9107

Treasury Department
See Financial Crimes Enforcement Network
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 9114

Veterans Affairs Department
NOTICES
Requests for Information:
Safety and Quality Standards for Providers of Modification Services under Automobile Adaptive Equipment Program, 9114–9116

Separate Parts In This Issue

Part II
Presidential Documents, 9117–9123, 9125–9126

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.

3 CFR
Administrative Orders:
Memorandums:
National Security Presidential Memorandum–2 of January 28, 2017 9119
National Security Presidential Memorandum–3 of January 28, 2017 9125

10 CFR
429 (2 documents) 8985
430 8985
431 8985

11 CFR
111 8986

16 CFR
1112 8989
1250 8989
Proposed Rules:
1500 9012
1507 9012

18 CFR
39 8993
40 8994
Proposed Rules:
39 9034

37 CFR
201 9004
204 9004

40 CFR
Proposed Rules:
52 9035

47 CFR
73 9009

Rules and Regulations

Federal Register
Vol. 82, No. 21
Thursday, February 2, 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.

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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2016–BT–TP–0029]

RIN 1904–AD71

Energy Conservation Program: Test Procedures for Central Air Conditioners and Heat Pumps

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

ACTION: Final rule; delay of effective date.

SUMMARY: This document temporarily postpones the effective date of a recently published final rule amending the test procedures for central air conditioners and heat pumps.

DATES: Effective February 1, 2017, the effective date of the rule amending 10 CFR parts 429 and 430 published in the **Federal Register** at 82 FR 1426 on January 5, 2017, is delayed until March 21, 2017. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of March 21, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashey.Armstrong@ee.doe.gov*. Ms. Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Washington, DC 20585–0121. Phone: (202) 287–6307. Email: *Johanna.Jochum@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On January 20, 2017, the Assistant to the President and Chief of Staff (''Chief of Staff'') issued a memorandum, published in the **Federal Register** on January 24, 2017 (82 FR 8346), outlining the President's plan for managing the Federal regulatory process at the outset of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy (''DOE'') hereby temporarily postpones the effective date of its final rule amending the test procedures for central air conditioners and heat pumps (collectively, ''CACs and HPs'') published in the **Federal Register** on January 5, 2017. See 82 FR 1426. The January 5 rule amends the test procedures and specific certification, compliance, and enforcement provisions related to CACs and HPs. Consistent with the memorandum, DOE is temporarily postponing the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff's memorandum of January 20, 2017.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing for 60 days the effective date of this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given that the memorandum was issued on January 20, 2017, and the previous effective date of the rule at issue was February 6, 2017. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on January 26, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017–02136 Filed 2–1–17; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket No. EERE–2014–BT–TP–0054]

RIN 1904–AD43

Energy Conservation Program: Test Procedures for Compressors

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

ACTION: Final rule; delay of effective date.

SUMMARY: This document temporarily postpones the effective date of a recently published final rule establishing test procedures for certain varieties of compressors.

DATES: Effective February 1, 2017, the effective date of the rule amending 10 CFR parts 429 and 431 published in the **Federal Register** at 82 FR 1052 on January 4, 2017, is delayed until March 21, 2017. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of March 21, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashey.Armstrong@ee.doe.gov*. Ms. Mary Greene, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Washington, DC 20585–0121. Phone: (202) 586–1817. Email: *Mary.Greene@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On January 20, 2017, the Assistant to the President and Chief of Staff (''Chief of Staff'') issued a memorandum, published in the **Federal Register** on January 24, 2017 (82 FR 8346), outlining the President's plan for managing the Federal regulatory process at the outset

of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy (''DOE'') hereby temporarily postpones the effective date of its final rule amending the test procedures for compressors published in the **Federal Register** on January 4, 2017. See 82 FR 1052. The January 4 rule establishes a new test procedure for certain varieties of compressors. Consistent with the memorandum, DOE is temporarily postponing the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff's memorandum of January 20, 2017.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing for 60 days the effective date of this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given that the memorandum was issued on January 20, 2017, and the previous effective date of the rule at issue was February 3, 2017. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on January 26, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017–02134 Filed 2–1–17; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2017–01]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of or failure to file certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: The final rules are effective on February 2, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Neven F. Stipanovic, Acting Assistant General Counsel, or Mr. Eugene J. Lynch, Paralegal, Office of General Counsel, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the ''Inflation Adjustment Act''),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the ''2015 Act''),[2] requires federal agencies, including the Commission, to adjust for inflation the civil monetary penalties within their jurisdiction according to prescribed formulas. A civil monetary penalty is ''any penalty, fine, or other sanction'' that (1) ''is for a specific amount'' or ''has a maximum amount'' under federal law; and (2) that a federal agency assesses or enforces ''pursuant to an administrative proceeding or a civil action'' in federal court.[3] Under the Federal Election Campaign Act, 52 U.S.C. 30101–46 (''FECA''), the Commission may seek and assess civil monetary penalties for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42.

As required by the 2015 Act,[4] the Commission recently instituted a one-time ''catch-up'' inflation adjustment to its civil monetary penalties. Civil Monetary Penalties Inflation Adjustments, 81 FR 41196 (June 24, 2016). Starting in 2017, the Inflation Adjustment Act requires federal agencies to adjust their civil penalties annually, and the adjustments must take effect no later than January 15 of every year.[5] Pursuant to guidance issued by the Office of Management and Budget,[6] the Commission is now adjusting its civil monetary penalties for 2017.[7]

The Commission must adjust for inflation its civil monetary penalties ''notwithstanding Section 553'' of the Administrative Procedures Act (''APA'').[8] Thus, the APA's notice-and-comment and delayed effective date requirements in 5 U.S.C. 553(b)–(d) do not apply because Congress has specifically exempted agencies from these requirements.[9]

Furthermore, because the inflation adjustments made through these final rules are required by Congress and involve no Commission discretion or policy judgments, these rules do not need to be submitted to the Speaker of the House of Representatives or the President of the Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.* Moreover, because the APA's notice-and-comment procedures do not apply to these final rules, the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA. *See* 5 U.S.C. 30111(d)(1), (4) (providing for

[1] Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), *amended by* Debt Collection Improvement Act of 1996, Public Law 104–134, sec. 31001(s)(1), 110 Stat. 1321, 1373; Federal Reports Elimination Act of 1998, Public Law 105–362, sec. 1301, 112 Stat. 3280.

[2] Public Law 114–74, section 701, 129 Stat. 584, 599.

[3] Inflation Adjustment Act, section 3(2).

[4] Inflation Adjustment Act, section 4(b)(1).

[5] Inflation Adjustment Act, section 4(a).

[6] *See* Inflation Adjustment Act section 7(a) (requiring OMB to ''issue guidance to agencies on implementing the inflation adjustments required under this Act''); *see also* Memorandum from Shaun Donovan, Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M–17–11 (Dec. 16, 2016), *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf* (''OMB Memorandum'').

[7] Inflation Adjustment Act, section 5.

[8] Inflation Adjustment Act, section 4(b)(2).

[9] *See, e.g., Asiana Airlines* v. *FAA,* 134 F.3d 393, 396–99 (D.C. Cir. 1998) (finding APA ''notice and comment'' requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

congressional review when Commission ''prescribe[s]'' a ''rule of law'').

The new penalty amounts will apply to civil monetary penalties that are assessed after the date the increase takes effect, even if the associated violation predated the increase.[10]

Explanation and Justification

As amended by the 2015 Act, the Inflation Adjustment Act requires the Commission to annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment (''COLA'') ratio.[11] The COLA ratio is the percentage that the Consumer Price Index (''CPI'')[12] ''for the month of October preceding the date of the adjustment'' exceeds the CPI for October of the previous year.[13] To calculate the adjusted penalty, the Commission must increase the most recent civil monetary penalty amount by the COLA ratio.[14] According to the Office of Management and Budget, the COLA ratio for 2017 is 0.01636, or 1.636%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.01636.[15]

The Commission assesses two types of civil monetary penalties that must be adjusted for inflation. First are penalties that are either negotiated by the Commission or imposed by a court for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. These civil monetary penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties assessed through the Commission's Administrative Fines Program for late filing or non-filing of certain reports required by FECA. *See* 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), 30104(a) (requiring political committee treasurers to report receipts and disbursements within certain time periods). The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and 111.44.

1. 11 CFR 111.24—Civil Penalties

FECA establishes the civil monetary penalties for violations of FECA and the other statutes within the Commission's jurisdiction. *See* 52 U.S.C. 30109(a)(5), (6), (12). Commission regulations in 11 CFR 111.24 provide the current inflation-adjusted amount for each such civil monetary penalty. To calculate the adjusted civil monetary penalty, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar.

The actual adjustment to each civil monetary penalty is shown in the chart below.

Section	Most recent civil penalty	COLA	New civil penalty
11 CFR 111.24(a)(1)	$18,750	1.01636	$19,057
11 CFR 111.24(a)(2)(i)	40,000	1.01636	40,654
11 CFR 111.24(a)(2)(ii)	65,593	1.01636	66,666
11 CFR 111.24(b)	5,609	1.01636	5,701
11 CFR 111.24(b)	14,023	1.01636	14,252

2. 11 CFR 111.43, 111.44—Administrative Fines

FECA authorizes the Commission to assess civil monetary penalties for violations of the reporting requirements of 52 U.S.C. 30104(a) according to the penalty schedules ''established and published by the Commission.'' 52 U.S.C. 30109(a)(4)(C)(i). The Commission has established two such schedules: The schedule in 11 CFR 111.43(a) applies to reports that are not election sensitive, and the schedule in 11 CFR 111.43(b) applies to reports that are election sensitive.[16] Each schedule contains two columns of penalties, one for late-filed reports and one for non-filed reports, with penalties based on the level of financial activity in the report and, if late-filed, its lateness.[17] In addition, 11 CFR 111.43(c) establishes a civil monetary penalty for situations in which a committee fails to file a report and the Commission cannot calculate the relevant level of activity. Finally, 11 CFR 111.44 establishes a civil monetary penalty for failure to file timely reports of contributions received less than 20 days, but more than 48 hours, before an election. *See* 52 U.S.C. 30104(a)(6).

To determine the adjusted civil monetary penalty amount for each level of activity, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar. The new civil monetary penalties are shown in the schedules in the rule text, below.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement, Penalties.

For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(a))

■ 1. The authority citation for part 111 continues to read as follows:

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 note; 31 U.S.C. 3701, 3711, 3716–3719, and 3720A, as amended; 31 CFR parts 285 and 900–904.

§ 111.24 [Amended]

■ 2. In the table below for § 111.24, for each paragraph indicated in the left column, remove the number indicated in the middle column, and add in its place the number indicated in the right column.

Paragraph	Remove	Add
(a)(1)	$18,750	$19,057
(a)(2)(i)	40,000	40,654
(a)(2)(ii)	65,593	66,666
(b)	5,609	5,701
(b)	14,023	14,252

■ 3. Section 111.43 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5,

[10] Inflation Adjustment Act, section 6.

[11] The COLA ratio must be applied to the most recent civil monetary penalties, which include the recent catch-up adjustments. Inflation Adjustment Act, section 4(a); *see also* OMB Memorandum at 2.

[12] The Inflation Adjustment Act, sec. 3, uses the CPI ''for all-urban consumers published by the Department of Labor.''

[13] Inflation Adjustment Act, section 5(b)(1).

[14] Inflation Adjustment Act, section 5(a), (b)(1).

[15] OMB Memorandum at 1.

[16] Election sensitive reports are certain reports due shortly before an election. *See* 11 CFR 111.43(d)(1).

[17] A report is considered to be ''not filed'' if it is never filed or is filed more than a certain number of days after its due date. *See* 11 CFR 111.43(e).

shall be calculated in accordance with the following schedule of penalties:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–4,999.99 [1]	[$33 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$326 × [1 + (.25 × Number of previous violations)].
$5,000–9,999.99	[$65 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$392 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$139 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$654 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$277 + ($26 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1176 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$417 + ($105 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3751 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$556 + ($139 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4862 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$833 + ($174 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6252 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1112 + ($208 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7641 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$1389 + ($243 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9030 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$2084 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,114 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$2779 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,503 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$3473 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,197 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$4168 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,893 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$4862 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,587 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$5557 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,282 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$6252 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,976 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$6946 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,671 × [1 + (.25 × Number of previous violations)].

[1] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–$4,999.99 [1]	[$65 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$654 × [1 + (.25 × Number of previous violations)].
$5,000–$9,999.99	[$131 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$784 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$196 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1176 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$417 + ($33 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1829 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$625 + ($105 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4168 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$833 + ($139 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5557 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$1250 + ($174 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6946 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1667 + ($208 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8335 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$2084 + ($243 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,420 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$3126 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,503 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$4168 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,893 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$5210 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,282 × [1 + (.25 × Number of previous violations)].

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$550,000–649,999.99	[$6252 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,671 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$7293 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,061 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$8335 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$19,449 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$9378 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$20,838 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$10,420 + ($277 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$22,228 × [1 + (.25 × Number of previous violations)].

[1] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be $7,641.

* * * * *

§ 111.44 [Amended]

■ 4. Amend paragraph (a)(1) of § 111.44 by removing ''$137'' and adding, in its place, ''$139''.

On behalf of the Commission.

Dated: January 5, 2017.

Matthew S. Petersen,

Commissioner, Federal Election Commission.

[FR Doc. 2017–01431 Filed 2–1–17; 8:45 am]

BILLING CODE 6715–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2017–0010]

16 CFR Parts 1112 and 1250

Safety Standard Mandating ASTM F963 for Toys

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: Section 106 of the Consumer Product Safety Improvement Act (CPSIA) made ASTM F963–07ε1, *Standard Consumer Safety Specification for Toy Safety,* a mandatory consumer product safety standard. That section also provides procedures for revisions to the standard. In accordance with these procedures, the Commission (CPSC or Commission) recently allowed the update to ASTM F963, ASTM F963–16, *Standard Consumer Safety Specification for Toy Safety* (ASTM F963–16), to become the mandatory toy standard. This direct final rule incorporates by reference ASTM F963–16 and updates the existing notice of requirements (NOR) that provide the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing for ASTM F963 pursuant to section 14(a)(3)(B)(vi) of the Consumer Product Safety Act (CPSA).

DATES: The rule is effective on April 30, 2017, unless we receive significant adverse comment by March 6, 2017. If we receive timely significant adverse comments, we will publish notification in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 30, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2017–0010, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: For information related to the toy standard, contact: Carolyn T. Manley, Lead Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814–4408; telephone: 301–504–7607; email: *cmanley@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 106 of the Consumer Product Safety Improvement Act of 2008. Section 106(a) of CPSIA mandated that beginning on February 10, 2009, ASTM F963–07ε1, *Standard Consumer Safety Specifications for Toy Safety*,[1] shall be considered a mandatory consumer product safety standard issued by the CPSC. Public Law 110–314. Since ASTM F963 was first mandated in 2009, there have been two revisions, ASTM F963–08 and ASTM F963–11. Currently, the provisions of ASTM F963–11 and section 4.27 of ASTM F963–07ε1 (toy chests) are considered consumer product safety standards issued by the Commission under section 9 of the CPSA. Under section 106(g) of the CPSIA, if ASTM proposes revisions to ASTM F963, ASTM must notify the Commission. The revised standard shall be considered to be a consumer product safety standard issued by the CPSC under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which ASTM notifies the Commission of the revision, unless, within 90 days after receiving that notice, the Commission notifies ASTM that it has determined that the proposed revision does not improve the safety of toys.

Notification of Revisions. On November 1, 2016, ASTM notified the CPSC of ASTM's approval and publication of revisions to ASTM F963–16 in a revised standard approved on August 1, 2016, ASTM F963–16, *Standard Consumer Safety Specification for Toy Safety.* On January 25, 2017, the Commission voted to

[1] Except for section 4.2 and Annex 4 or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute.

allow the provisions of ASTM F963–16 to become the CPSC mandatory toy standard. As discussed below, the Commission has reviewed the differences between ASTM F963–11 and section 4.27 of ASTM F963–07ε1 (for toy chests the current mandatory toys standard) and ASTM F963–16 (the revised toys standard).

B. Revisions to the ASTM Standard

In general, ASTM F963–16 contains clarifications, corrections, and new requirements that will increase safety, reduce testing burden, or enhance clarity and utility of the standard. A number of changes align ASTM F963 more closely with the European Standard (EN) 71, *Safety of Toys Part 1: Mechanical and Physical Properties,* and International Organization for Standardization (ISO) 8124, *Safety of Toys Part 1: Safety Aspects Related to Mechanical and Physical Properties,* performance requirements. In addition, new provisions were added to the standard to address new types of toys or hazards. The revisions appear in every major section of the standard, beginning with Section 1.7, which has been updated to return toy chest requirements to ASTM F963.[2] Finally, many small editorial changes throughout the revised standard keep the standard's format and numbering consistent. These changes are strictly editorial and do not have an impact on toy safety.

Changes were made in the following sections:

- Scope—Updates section 1.7, which lists all sections of the standard, to reflect the addition of toy chests.
- Referenced documents—Removes one reference, updates one, and adds 22 new references.
- Terminology—Adds seventeen new definitions, changes seven definitions, and removes six definitions, generally because they are redundant with new or changed definitions, and thus, are no longer needed.
- Labeling Requirements—Updates labeling requirements for battery-operated toys and magnetic toys.
- Instructional Literature—Revises language to clarify instructional literature requirements for battery-operated toys and battery-powered ride-on toys.
- Batteries—Adds new testing requirements to address toys that contain rechargeable cells and batteries. Adds a new warning label for certain button and coin cell batteries of nominal 1.5 volts or greater to address hazards that have been identified with these cells. Adds four new test methods for toys that contain rechargeable cells and batteries: Battery overcharging test, repetitive overcharging test, single fault charging test and short circuit protection test.
- Cleanliness (biological)—Changes the test methods for both microbial cleanliness of cosmetics, liquids, pastes, putties, gels, powders, and feathers and the cleanliness of stuffing materials.
- Cleanliness (stuffing)—Changes the test methods for both microbial cleanliness of cosmetics, liquids, pastes, putties, gels, powders, and feathers and the cleanliness of stuffing materials.
- Expanding Materials—Adds new definitions, performance requirements, test methodology and a test template to address the emerging hazard of gastrointestinal blockage related to ingestion of expanding materials.
- Heavy Elements—Allows X-ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams, commonly known as HDXRF, for Total Element Content Screening.
- Impaction Hazard—Clarifies impaction hazard test fixture requirements for rigid squeeze toys and tethered rigid components.
- Magnets—Includes a new cyclic soaking test for only wooden toys, toys intended to be used in water, mouth pieces of mouth-actuated toys with magnets or magnetic components. New definitions for ''experimental/science sets.''
- Mouth-Actuated Toys—Adds design requirements to prevent the projectile or any liberated toy part from entering the mouth.
- Projectile Toys—Includes changes to descriptions, definitions, allowed shapes, types of projectile toys, exemptions, assessments and kinetic energy density levels allowed for certain types of projectile toys.
- Ride-on Toys (stability)—Requires dimensional spacing between wheels on the same axis of ride-on toys.
- Ride-on Toys (overloading)—Requires a more stringent overload weight test for ride-on and seated toys.
- Ride-on Toys (restraints)—Exempts straps used for waist restraints on ride-on toys from the free length and loop requirements.
- Sound-Producing Toys—Redefines ''mouth-actuated toys'' to include a broader range of toys, such as noisemakers and projectile toys; increases peak limits (due to miscalculated values); adds new noise limit; lowers test speed for push-pull toys; and revises the format, sequence and requirements sections for clarification.
- Toy Chests—Reincorporates toy chest section 4.27 and associated provisions from ASTM F963–07ε1 into the current 2016 toy standard, and clarifies a multi-positional lid requirement when testing for maximum lid drop requirements.
- Annex—Adds Annex A12 to document the rationale for the changes in the 2016 version of ASTM F963.

C. Incorporation by Reference

Although ASTM F963–16 is mandatory by operation of statute, nothing currently in the Code of Federal Regulations (CFR) indicates that ASTM F963 is a CPSC mandatory standard. This direct final rule adds a new part 1250, Safety Standard Mandating ASTM F963 for Toys, which incorporates by reference ASTM F963–16 into the CFR, along with the rest of CPSC's mandatory rules so that the public may more readily ascertain the mandatory rules that apply.

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble of the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section B of this preamble summarizes the ASTM F963–16 standard that the Commission incorporates by reference into 16 CFR part 1250. The standard is reasonably available to interested parties, and interested parties may purchase a copy of the standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; *http://www.astm.org/.* A copy of the standard can also be inspected at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html.*

D. Certification

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other

[2] Toy chest requirements were last included in the ASTM F963–07ε1.

act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted in the preceding discussion, standards issued under section 106(f)(1)(B) are ''consumer product safety standards.'' Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because toys are children's products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the phthalates prohibitions of section 106 of the CPSIA, and the tracking label requirement in section 14(a)(5) of the CPSA.

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSIA, the Commission has previously published two NORs for accreditation of third party conformity assessment bodies for testing toys (76 FR 46598 (Aug. 3, 2011), 78 FR 15836 (March 12, 2013)). The last NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing toys to ASTM F963–11. The NOR for ASTM F963–11 is listed in the Commission's rule, ''Requirements Pertaining to Third Party Conformity Assessment Bodies.'' 16 CFR part 1112.

The previous NOR for the toy safety standard included 35 sections from ASTM F963–11 and one section from ASTM F963–07ε1 (Section 4.27, Toy Chests) that required third party testing. The revisions to ASTM F963–11 that were adopted into ASTM F963–16 include new requirements, new test methods, and several clarifications to safety provisions and test methods.

The Commission will require third party testing for 37 sections of ASTM F963–16, including the same 35 sections that required third party testing for ASTM F963–11, plus two new sections. The new sections are Section 4.40 for Expanding Materials and Section 4.41 for Toy Chests. Section 4.40 for Expanding Materials is a new safety requirement, which addresses a hazard that was not addressed in earlier versions of ASTM F963. Section 4.41 for toy chests reincorporates the toy chest requirements from ASTM F963–07ε1 back into ASTM F963. The incorporation of the toy chest requirements back into ASTM F963–16 simplifies the NOR because it now references only one version of the standard, ASTM F963–16. This rule revises section 1112.15(b)(32)(ii) of the NOR for ASTM F963 in part 1112 to add two new subsections, (JJ) for section 4.40 for expanding materials and (KK) for section 4.41 for toy chests to the NOR. Additionally, references to section 4.27 of ASTM F963–07ε1 (toy chests) have been deleted from section 1112.15(b)(32)(i) to reflect that the toy chest provisions of ASTM F963–07ε1 have been reincorporated into ASTM F963–16. Finally, the reference to ASTM F963–07ε1 regarding toys chests in section 1112.15(c)(1)(ii) has been deleted to reflect that provision as reincorporated into ASTM F963–16, and the citation regarding the incorporation by reference of ASTM F963 has been updated to list ASTM F963–16 in section 1112.15(c)(1) (iii).

Certain provisions of ASTM F963–16 do not require third party testing as was the case in the previous NORs issued for ASTM F963. The ASTM F963–16 provisions that do not require third party testing are in the following areas:

- Any provision of ASTM F963 that section 106 of the CPSIA excepted from being a mandatory consumer product safety standards issued by the Commission. The CPSIA also excepted from ASTM F963 any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute. In addition, the CPSIA excepted provisions from ASTM F963 that restates or incorporates a regulation promulgated by the Food and Drug Administration or any statute administered by the Food and Drug Administration. Section 4, Public Law 112–28—Aug 12, 2011.
- Those sections of ASTM F963–16 that pertain to the manufacturing process and, thus, cannot be evaluated meaningfully by a test of the finished product (*e.g.,* the purified water provision at section 4.3.6.1).
- Those provisions of ASTM F963–16 with requirements for labeling, instructional literature, or producer's markings.
- The provision in ASTM F963–16 that sets a limit for a DI (2-ethylhexyl) phthalate in pacifiers, rattles, and teethers. This section is excepted from third party testing because section 108 of the CPSIA sets limits for this and other phthalates that are more stringent than this requirement in ASTM F963–16.

Finally, as noted, some of the revised sections of ASTM F963 include changes to test methods. However, the test method revisions do not involve a change in scientific discipline necessary to conduct the test or a significant increase in complexity. Testing laboratories that are accredited and CPSC-accepted to test to specific sections in ASTM F963–11 are considered by CPSC to be competent to conduct testing to those same sections in ASTM F963–16. Therefore, CPSC will accept testing to support product certifications for sections in ASTM F963–16 if the test laboratory is already CPSC-accepted to those same sections in ASTM F963–11. Test laboratories that conduct testing to support product certifications to ASTM F963–16 must show in their test reports ''ASTM F963–16'' and the specific section numbers in the standard to which the product was evaluated.

There are two new sections in ASTM F963–16. Because section 4.41 for Toy Chests merely reincorporates the toy chests provision into ASTM F963–16, the CPSC will accept testing if the laboratory is already CPSC-accepted for ASTM F963–07ε1, Section 4.27 for Toy Chests. Additionally, although section 4.40 for Expanding Materials is a new requirement not previously found in ASTM F963, the CPSC will accept product testing for certification, if the test laboratory is already CPSC-accepted for ASTM F963–11, sections 4.6 for Small Parts and 4.24 for Squeeze Toys. This is because the new provision in section 4.40 in ASTM F963–16 involves mechanical testing, including dimensional measurements and the use of a test gauge. The testing methods have strong similarities with other mechanical testing in section 4.6 Small Objects and Section 4.24-Squeeze Toys of ASTM F963–11. Therefore, CPSC considers test laboratories that are currently CPSC-accepted for testing to section 4.6 Small Objects and Section 4.24-Squeeze Toys of ASTM F963–11 to be competent to conduct testing to this new requirement.

CPSC will accept ASTM F963–16 testing results by test laboratories that are CPSC-accepted to ASTM F963–11 sections for a period not to exceed 2 years. This should allow adequate time for test laboratories to work with their accreditation bodies, make official updates to their accreditation scope to include ASTM F963–16 sections, and submit applications to the CPSC.

The CPSC will open the application process for all sections of ASTM F963–16 when this document is published in

the **Federal Register**. Test laboratories that seek CPSC acceptance for one or more ASTM F963–16 sections will be required to update their accreditation scope. To be CPSC-accepted for sections in ASTM F963–16, a test laboratory's scope of accreditation must include the reference to ''ASTM F963–16'' and a specific reference to one or more of the 37 sections listed in the NOR. Test laboratories that are currently CPSC-accepted to ASTM F963–11 are instructed to update their accreditation scope to include ASTM F963–16 sections as soon as possible, and submit their application for CPSC acceptance. Test laboratories that were not previously CPSC-accepted to sections of ASTM F963–11 and that wish to request CPSC acceptance to ASTM F963–16 should work with their accreditation bodies to include ''ASTM F963–16'' sections in their scope of accreditation.

On February 4, 2019, the CPSC will no longer accept laboratory applications that reference sections of ''ASTM F963–11.'' At that time, the scope document submitted with applications to CPSC must reference ''ASTM F963–16'' and the specific section numbers listed in the NOR in section 16 CFR 1112.15(b)(32). This approach will avoid disruption to third party testing to the toy safety standard and allow for a practicable transition from ASTM F963–11 to ASTM F963–16 for testing laboratories, the toy industry, and other interested parties.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are ''impracticable, unnecessary, or contrary to the public interest.'' The Commission concludes that notice and comment is unnecessary because ASTM F963 automatically becomes a consumer product safety standard by operation of law. The Commission has voted to allow ASTM F963–16 to become the mandatory CPSC standard. Even without the incorporation by reference, ASTM F963–16 will take effect as the new mandatory CPSC standard pursuant to section 106(g) of the CPSIA. This rule incorporates by reference ASTM F963–16 into the CFR to inform the public what version of the ASTM F963 is mandatory. Because this document merely incorporates by reference a standard that takes effect by operation of statute, public comment could not affect the changes to the standard or the effect of the revised standard as a consumer product safety standard under section 106(g) of the CPSIA. The rule also updates the corresponding provisions of the NOR for ASTM F963 in part 1112 to reflect the revision to the standard. The amendment to part 1112 does not establish substantive requirements, but updates the criteria and process for CPSC's acceptance of accreditation of third party conformity assessment bodies for testing toys under the revised ASTM F963 standard. Therefore, the Commission concludes that public comment is not necessary.

The Commission believes that issuing a direct final rule in these circumstances is appropriate. In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS also recommended using direct final rulemaking when an agency uses the ''unnecessary'' prong of the good cause exemption to notice and comment rulemaking. Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not believe comment is necessary and do not expect any significant adverse comments to the direct final rule.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on April 30, 2017. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change.

Should the Commission receive significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. 5 U.S.C. 603 and 604. As explained above, the Commission has determined that notice and comment is not necessary for this direct final rule. Thus, the RFA does not apply. We also note the limited nature of this document. The incorporation by reference of ASTM F963–16 and the update to the notice of requirements in part 1112 will not result in any substantive changes to the standard. Rather, with this action, the CFR will reflect the mandatory CPSC standard that takes effect under the CPSIA and will update the corresponding NOR provisions in 16 CFR part 1112.

H. Paperwork Reduction Act

The toy standard contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). OMB has approved the collection of information for ASTM F963–11 under OMB Control No. 3041–0159. ASTM F963–16 updates the labeling requirements for battery-operated toys and magnetic toys, as well as revises the language to clarify instructional literature requirements for battery-operated toys and battery-powered ride-on toys. CPSC will update the burden hours in the existing collection of information to reflect the requirements in the 2016 version of the ASTM F963 standard, including those for labeling and instructional literature.

I. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

J. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a ''consumer product safety standard under [the CPSA)]'' is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury, unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an

exemption from this preemption under certain circumstances.

Section 106(f) of the CPSIA states that rules issued under that section ''shall be considered consumer product safety standards issued by the Commission under section of the Consumer Product Safety Act'' thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 106 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

K. Effective Date

Under the procedure set forth in section 106(g) of the CPSIA, when ASTM revises ASTM F963, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product. In accordance with this provision, this rule establishes an effective date that is 180 days after we receive notification from ASTM of revisions to the standard. As discussed in section F of this preamble, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective on April 30, 2017. Additionally, the effective date for the NOR is April 30, 2017, the same date that the provisions of ASTM F963–16 become effective.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Incorporation by reference, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1250

Consumer protection, Imports, Incorporation by reference, Infants and children, Law enforcement, Safety, Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II, as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 is revised to read as follows:

Authority: 15 U.S.C. 2063; Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008).

■ 2. Amend § 1112.15 by:
■ a. Revising the introductory text to paragraph (b)(32);
■ b. Removing and reserving paragraph (b)(32)(i);
■ c. Revising the introductory text to paragraph (b)(32)(ii);
■ d. Adding paragraphs (b)(32)(ii)(JJ) and (KK);
■ e. Revising paragraph (c)(1)(ii) and removing paragraph (c)(1)(iii).

The revisions and additions read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(32) 16 CFR part 1250, safety standard for toys. The CPSC only requires certain provisions of ASTM F963–16 to be subject to third party testing; and therefore, the CPSC only accepts the accreditation of third party conformity assessment bodies for testing under the following toy safety standards:

(i) [Reserved]

(ii) ASTM F963–16:

* * * * *

(JJ) Section 4.40, Expanding Materials

(KK) Section 4.41, Toy Chests (except labeling and/or instructional literature requirements)

* * * * *

(c) * * *

(1) * * *

(ii) ASTM F963–16, ''Standard Consumer Safety Specification for Toy Safety,'' August 1, 2016.

* * * * *

■ 3. Add part 1250 to read as follows:

PART 1250—SAFETY STANDARD MANDATING ASTM F963 FOR TOYS

Sec.

1250.1 Scope.
1250.2 Requirements for toy safety.

Authority: Pub. L. 110–314, sec. 106, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

§ 1250.1 Scope.

This part establishes a consumer product safety standard for toys that mandates provisions of ASTM F963.

§ 1250.2 Requirements for toy safety.

(a) Except as provided for in paragraph (b) of this section, toys must comply with the provisions of ASTM F963–16, Standard Consumer Safety Specification for Toy Safety, approved August 1, 2016. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; *http://www.astm.org/*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html.*

(b) Pursuant to section 106(a) of the Consumer Product Safety Improvement Act of 2008 section 4.2 and Annex 5 or any provision of ASTM F963 that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute or any provision that restates or incorporates a regulation promulgated by the Food and Drug Administration or any statute administered by the Food and Drug Administration are not part of the mandatory standard incorporated in paragraph (a) of this section.

Dated: January 27, 2017.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2017–02147 Filed 2–1–17; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 39

[Docket No. RM15–25–000]

Availability of Certain North American Electric Reliability Corporation Databases to the Commission

January 18, 2017.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of compliance date.

SUMMARY: This document provides notice of the compliance date for the amended regulations adopted in the final rule issued by the Federal Energy Regulatory Commission (Commission) in Docket No. RM15–25–000, requiring the North American Electric Reliability Corporation (NERC) to provide the Commission with access to certain databases compiled and maintained by NERC.

DATES: The date for compliance with the amended regulations adopted in Docket No. RM15–25–000 is February 21, 2017.

FOR FURTHER INFORMATION CONTACT: Raymond Orocco-John (Technical Information), Office of Electric

Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6593, *Raymond.Orocco-John@ferc.gov.*

Julie Greenisen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6362, *julie.greenisen@ferc.gov.*

SUPPLEMENTARY INFORMATION: On June 16, 2016, the Commission issued a final rule amending its regulations to require NERC to provide the Commission, and Commission staff, with access to certain databases compiled and maintained by NERC.[1] The compliance date for the new regulation was deferred based on issuance of the final rule in a related rulemaking, Commission Docket No. RM16–15–000. The final rule in the related proceeding has now been issued and was published in the **Federal Register** on December 21, 2016, to become effective February 21, 2017. This document provides notice of the corresponding date for compliance with the regulations adopted in Docket No. RM15–25–000.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02228 Filed 2–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM16–7–000; Order No. 835]

Disturbance Control Standard—Contingency Reserve for Recovery From a Balancing Contingency Event Reliability Standard

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Commission approves Reliability Standard BAL–002–2 (Disturbance Control Standard—Contingency Reserve for Recovery from a Balancing Contingency Event) submitted by the North American Electric Reliability Corporation (NERC). Reliability Standard BAL–002–2 is designed to ensure that balancing authorities and reserve sharing groups balance resources and demand and return their Area Control Error to defined values following a Reportable Balancing Contingency Event. In addition, the Commission directs NERC to develop modifications to Reliability Standard BAL–002–2 to address concerns regarding extensions of the 15-minute period for Area Control Error recovery and contingency reserve restoration. The Commission also directs NERC to collect and report on data regarding additional megawatt losses following Reportable Balancing Contingency Events during the Contingency Reserve Restoration Period and to study and report on the reliability risks associated with megawatt losses above the most severe single contingency that do not cause energy emergencies.

DATES: This rule is effective April 3, 2017.

FOR FURTHER INFORMATION CONTACT: Enakpodia Agbedia (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6750, *Enakpodia.Agbedia@ferc.gov.*

Mark Bennett (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8524, *Mark.Bennett@ferc.gov.*

SUPPLEMENTARY INFORMATION:

ORDER NO. 835

FINAL RULE

(Issued January 19, 2017)

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission approves Reliability Standard BAL–002–2 (Disturbance Control Standard—Contingency Reserve for Recovery from a Balancing Contingency Event). The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), developed and submitted Reliability Standard BAL–002–2 for Commission approval. Reliability Standard BAL–002–2 is intended to ensure that balancing authorities and reserve sharing groups are able to recover from system contingencies by deploying adequate reserves to return their Area Control Error (ACE) to defined values and by replacing the capacity and energy lost due to generation or transmission equipment outages.[2] In addition, the Commission approves eight new and revised definitions proposed by NERC for inclusion in the NERC Glossary and the retirement of currently-effective Reliability Standard BAL–002–1 immediately prior to the effective date of Reliability Standard BAL–002–2. The Commission also approves, with one modification, Reliability Standard BAL–002–2's associated violation risk factors and violation severity levels, and implementation plan.

2. Pursuant to section 215(d)(5) of the FPA,[3] the Commission directs NERC to develop modifications to Reliability Standard BAL–002–2, Requirement R1 to address concerns related to the potential reliability impact of repeated extensions of the period for ACE recovery. To address the concerns, the Notice of Proposed Rulemaking (NOPR) proposed directing that NERC modify the Reliability Standard to require reliability coordinator approval of extensions of the ACE recovery period. Numerous commenters opposed the proposal, arguing that the proposal has the potential to complicate an already challenging situation. Thus, to address the underlying concern while cognizant of the NOPR comments, the final rule adopts a different approach of directing NERC to develop modifications to Reliability Standard BAL–002–2 that would require an entity to provide certain information to the reliability coordinator when the entity does not timely recover ACE due to an intervening disturbance. As discussed below, the Commission also directs NERC: (1) To collect and report on data related to resets of the contingency reserve restoration period; and (2) to study and report on the reliability risks associated with megawatt losses above an applicable entity's most severe single contingency (MSSC) that do not cause energy emergencies.

I. Background

3. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards that are subject to Commission review and approval. The Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard

[1] *Availability of Certain North American Electric Reliability Corporation Databases to the Commission,* Order No. 824, 155 FERC ¶ 61,275 (2016).

[1] 16 U.S.C. 824(o).

[2] ACE is the instantaneous difference between a balancing authority's Net Actual and Scheduled Interchange, taking into account the effects of Frequency Bias, correction for meter error, and Automatic Time Error Correction (ATEC), if operating in ATEC mode. ATEC is only applicable to balancing authorities in the Western Interconnection. NERC Glossary of Terms Used in NERC Reliability Standards (NERC Glossary) at 7 (updated September 29, 2016).

[3] 16 U.S.C. 824o(d)(5).

if it determines that the Reliability Standard is just, reasonable, not unduly discriminatory or preferential and in the public interest.[4] Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.[5] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[6] and subsequently certified NERC.[7]

4. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including Reliability Standard BAL–002–0.[8] In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed the ERO to develop modifications to Reliability Standard BAL–002–0: (1) To include a requirement that explicitly provides that demand side management may be used as a resource for contingency reserves; (2) to develop a continent-wide contingency reserve policy; and (3) to refer to the ERO rather than the NERC Operating Committee in Requirements R4.2 and R6.2.[9] On January 10, 2011, the Commission approved Reliability Standard BAL–002–1, which addressed the third directive described above.[10]

II. NERC Petition and Reliability Standard BAL–002–2

5. On January 29, 2016, NERC filed a petition seeking approval of Reliability Standard BAL–002–2;[11] eight new or revised definitions to be added to the NERC Glossary; and Reliability Standard BAL–002–2's associated violation risk factors and violation severity levels, effective date, and implementation plan.[12] NERC stated that Reliability Standard BAL–002–2 is just, reasonable, not unduly discriminatory or preferential, and in the public interest because it satisfies the factors set forth in Order No. 672, which the Commission applies when reviewing a proposed Reliability Standard.[13] NERC also asserted that Reliability Standard BAL–002–2 addresses the outstanding directives from Order No. 693 regarding the use of demand side management as a resource for contingency reserve and the development of a continent-wide contingency reserve policy.

6. Reliability Standard BAL–002–2 consolidates six requirements in currently-effective Reliability Standard BAL–002–1 into three requirements and is applicable to balancing authorities and reserve sharing groups. NERC stated that Reliability Standard BAL–002–2 improves upon existing Reliability Standard BAL–002–1 because ''it clarifies obligations associated with achieving the objective of BAL–002 by streamlining and organizing the responsibilities required therein, enhancing the obligation to maintain reserves, and further defining events that predicate action under the standard.'' [14] NERC also stated that Reliability Standard BAL–002–2 ''address[es] and supersede[s]'' the proposed interpretation previously submitted by NERC (*i.e.,* of Reliability Standard BAL–002–1a) and pending in Docket No. RM13–6–000.[15]

7. Requirement R1 of BAL–002–2 requires a balancing authority or reserve sharing group experiencing a Reportable Balancing Contingency Event to deploy its contingency reserves to recover its ACE to certain prescribed values within the Contingency Event Recovery Period of 15 minutes.[16] However, under certain circumstances, Reliability Standard BAL–002–2 relieves responsible entities from strict compliance with the existing time periods for ACE recovery and contingency reserve restoration ''to ensure responsible entities retain flexibility to maintain service to Demand, while managing reliability, and to avoid duplication with other Reliability Standards.'' [17]

8. Specifically, Requirement R1, Part 1.3.1 provides that a balancing authority or reserve sharing group is not subject to Requirement R1, Part 1.1 if it: (1) Is experiencing a Reliability Coordinator declared Energy Emergency Alert Level; (2) is utilizing its contingency reserve to mitigate an operating emergency in accordance with its emergency Operating Plan, and (3) has depleted its contingency reserve to a level below its most severe single contingency.

9. In addition, under Requirement R1, Part 1.3.2, a balancing authority or reserve sharing group is not subject to Requirement R1, Part 1.1 if the balancing authority or reserve sharing group experiences: (1) Multiple Contingencies where the combined megawatt (MW) loss exceeds its most severe single contingency and that are defined as a single Balancing Contingency Event or (2) multiple Balancing Contingency Events within the sum of the time periods defined by the Contingency Event Recovery Period and Contingency Reserve Restoration Period whose combined magnitude exceeds the Responsible Entity's most severe single contingency.

10. Requirement R2 provides that each responsible entity:

> shall develop, review and maintain annually, and implement an Operating Process as part of its Operating Plan to determine its Most Severe Single Contingency and to make preparations to have Contingency Reserve equal to, or greater than the Responsible Entity's Most Severe Single Contingency available for maintaining system reliability.

[4] *Id.* 824o(d)(2).

[5] *Id.* 824o(e).

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

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

[8] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[9] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 356.

[10] *North American Electric Reliability Corp.,* 134 FERC ¶ 61,015 (2011).

[11] Reliability Standard BAL–002–2 is available on the Commission's eLibrary document retrieval system in Docket No. RM16–7–000 and on the NERC Web site, *www.nerc.com.*

[12] The eight proposed new and revised definitions for inclusion in the NERC Glossary are for the following terms: Balancing Contingency Event, Most Severe Single Contingency, Reportable Balancing Contingency Event, Contingency Event Recovery Period, Contingency Reserve Restoration Period, Pre-Reporting Contingency Event ACE Value, Reserve Sharing Group Reporting ACE, and Contingency Reserve. NERC Petition at 28–34.

[13] NERC Petition at 13 and Ex. F (Order No. 672 Criteria).

[14] *Id.* at 13.

[15] *Id.* at 1. On February 12, 2013, NERC filed a proposed interpretation of Reliability Standard BAL–002–1 that construed the Reliability Standard so that the 15-minute ACE recovery period would not apply to events of a magnitude exceeding an entity's most severe single contingency. In a NOPR issued on May 16, 2013, the Commission proposed to remand the proposed interpretation on procedural grounds. *Electric Reliability Organization Interpretation of Specific Requirements of the Disturbance Control Performance Standard,* 143 FERC ¶ 61,138 (2013). The rulemaking on the proposed interpretation is pending. In the petition in the immediate proceeding, NERC states that, upon approval of Reliability Standard BAL–002–2, NERC will file a notice of withdrawal of the proposed interpretation. NERC Petition at 1.

[16] NERC proposes to define Reportable Balancing Contingency Event as: ''Any Balancing Contingency Event occurring within a one-minute interval of an initial sudden decline in ACE based on EMS scan rate data that results in a loss of MW output less than or equal to the Most Severe Single Contingency, and greater than or equal to the lesser amount of: (i) 80% of the Most Severe Single Contingency, or (ii) the amount listed below for the applicable Interconnection. Prior to any given calendar quarter, the 80% threshold may be reduced by the responsible entity upon written notification to the Regional Entity.'' NERC Petition at 30. Contingency Event Recovery Period, as proposed by NERC, means: ''A period that begins at the time that the resource output begins to decline within the first one-minute interval of a Reportable Balancing Contingency Event, and extends for fifteen minutes thereafter.'' *Id.* at 32.

[17] *Id.* at 4.

NERC explained that Requirement R2 requires responsible entities to demonstrate that their process for calculating their most severe single contingency ''surveys all contingencies, including single points of failure, to identify the event that would cause the greatest loss of resource output used by the [reserve sharing group or balancing authority] to meet Firm Demand.'' [18] NERC further stated that Requirement R2 supports Requirements R1 and R3 in Reliability Standard BAL–002–2 ''as these requirements rely on proper calculation of [most severe single contingency].'' [19]

11. Requirement R3 provides that ''each Responsible Entity, following a Reportable Balancing Contingency Event, shall restore its Contingency Reserve to at least its Most Severe Single Contingency, before the end of the Contingency Reserve Restoration Period [90 minutes], but any Balancing Contingency Event that occurs before the end of a Contingency Reserve Restoration Period resets the beginning of the Contingency Event Recovery Period.''

12. NERC explained that the revised language in the consolidated requirements in Reliability Standard BAL–002–2 will improve efficiency and clarity by removing ''unnecessary entities from compliance to capture only those entities that are vital for reliability.'' [20] NERC stated that the new definitions for Balancing Contingency Event and Reportable Balancing Contingency Event more clearly identify the types of events that cause frequency deviations necessitating action under Reliability Standard BAL–002–2 and provide additional detail regarding the types of resources that may be identified as contingency reserves. Furthermore, NERC stated that Reliability Standard BAL–002–2 ''ensures objectivity of the reserve measurement process by guaranteeing a Commission-sanctioned continent-wide reserve policy,'' and therefore satisfies an outstanding Order No. 693 directive for uniform elements, definitions and requirements for a continent-wide contingency reserve policy.[21] Finally, NERC asserted that the revised definition of Contingency Reserves ''improves the existing definition by addressing a Commission directive in Order No. 693 to allow demand side management to be used as a resource for contingency reserve when necessary.'' [22]

13. NERC submitted proposed violation risk factors and violation severity levels for each requirement of Reliability Standard BAL–002–2 and an implementation plan and effective dates. NERC stated that these proposals were developed and reviewed for consistency with NERC and Commission guidelines. NERC proposed an effective date for Reliability Standard BAL–002–2 that is the first day of the first calendar quarter that is six months after the date of Commission approval. NERC explained that this implementation date will allow entities to make necessary modifications to existing software programs to ensure compliance.[23]

14. On February 12, 2016, NERC submitted a supplemental filing to clarify a statement in the petition that Reliability Standard BAL–002–2 would operate in conjunction with Reliability Standard TOP–007–0 to control system frequency by addressing transmission line loading in the event of a transmission overload. NERC explained that, while Reliability Standard TOP–007–0 will be retired on April 1, 2017, ''the obligations related to [transmission line loading] under TOP–007–0 will be covered by Commission-approved TOP–001–3, EOP–003–2, IRO–009–2, and IRO–008–2 . . . by requiring relevant functional entities to communicate [Interconnection Reliability Operating Limits (IROL)] and [System Operating Limits (SOL)] exceedances so that the [reliability coordinator] can direct appropriate corrective action to mitigate or prevent those events.'' [24]

15. On March 31, 2016, NERC submitted a second supplemental filing to ''further clarify the extent to which BAL–002–2 interacts with other Commission-approved Reliability Standards to promote Bulk Power System reliability . . . [and support] the overarching policy objective reflected in the stated purpose of Reliability Standard BAL–002–2.'' [25] In its filing, NERC expanded upon the explanation in the petition regarding how an ''integrated'' and ''coordinated suite of Reliability Standards'' (BAL–001–2, BAL–003–1, TOP–007–0, EOP–002–3, EOP–011–1, IRO–008–2, and IRO–009–2) will apply to events causing MW losses above a responsible entity's most severe single contingency, and how those other Reliability Standards are better designed to manage the greater risks created by such events.[26]

III. Notice of Proposed Rulemaking

16. On May 19, 2016, the Commission issued a NOPR proposing to approve Reliability Standard BAL–002–2 as just, reasonable, not unduly discriminatory or preferential and in the public interest.[27] The Commission also proposed to approve NERC's eight proposed new and revised definitions and the retirement of currently-effective Reliability Standard BAL–002–1. Further, the Commission proposed to direct NERC to change the proposed violation risk factor from ''medium'' to ''high'' for Reliability Standard BAL–002–2, Requirements R1 and R2.

17. In the NOPR, the Commission recognized that it is essential for grid reliability that responsible entities balance resources and demand and restore system frequency to recover from a system event, and that they maintain reserves necessary to replace capacity and energy lost due to generation or transmission outages. The Commission also stated that Reliability Standard BAL–002–2 improves upon currently-effective Reliability Standard BAL–002–1 by consolidating requirements to streamline and clarify the obligations related to achieving these goals. However, the Commission raised concerns regarding possible extensions of the 15-minute ACE recovery period and the 90-minute Contingency Reserve Restoration Period, as well as NERC's proposal to limit the scope of Reliability Standard BAL–002–2 to a responsible entity's most severe single contingency.

18. In the NOPR, the Commission sought comment on the following issues: (1) Reliability coordinator authorization of extensions of the 15-minute ACE recovery period; (2) resets or credits during the 90-minute Contingency Reserve Restoration Period; (3) the exclusion of megawatt losses above the most severe single contingency in the proposed definition of Reportable Balancing Contingency Event; and (4) NERC's proposal to reduce from ''high'' to ''medium'' the violation risk factor for proposed Requirements R1 and R2. The Commission also sought comment on whether NERC's proposed definition of contingency reserve should include the NERC-defined term Demand-side Management.

[18] *Id.* at 25.

[19] *Id.* NERC provides examples of how responsible entities may calculate the most severe single contingency in the petition. *See* NERC Petition, Ex. B (Calculating Most Severe Single Contingency).

[20] NERC Petition at 14.

[21] *Id.*

[22] *Id.* at 33.

[23] NERC Petition, Ex. D (Implementation Plan) at 3.

[24] NERC February 12, 2016 Supplemental Filing at 2–3.

[25] NERC March 31, 2016 Supplemental Filing at 1, 5.

[26] *Id.* at 2–5.

[27] *Disturbance Control Standard—Contingency Reserve for Recovery from a Balancing Contingency Event Reliability Standard,* Notice of Proposed Rulemaking, 81 FR 33,441 (May 26, 2016), 155 FERC ¶ 61,180 (2016) (NOPR).

19. In response to the NOPR, the Commission received 11 sets of comments. We address below the issues raised in the NOPR and comments. The Appendix to this final rule lists the entities that filed comments in response to the NOPR.

IV. Discussion

20. Pursuant to FPA section 215(d)(2), we approve Reliability Standard BAL–002–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We also approve NERC's eight new and revised proposed definitions and, with one exception, the proposed violation risk factor and violation severity level assignments. In addition, we approve NERC's implementation plan establishing an effective date of the first day of the first calendar quarter, six months after the date of Commission approval, and the retirement of currently-effective BAL–002–1 immediately before that date.[28]

21. The purpose of Reliability Standard BAL–002–2 is to ensure that balancing authorities and reserve sharing groups balance resources and demand and return their ACE to defined values following a Reportable Balancing Contingency Event. We determine that Reliability Standard BAL–002–2 improves upon currently-effective Reliability Standard BAL–002–1 by consolidating the number of requirements to streamline and clarify the obligations for responsible entities to deploy contingency reserves to stabilize system frequency in response to system contingencies.

22. We conclude that BAL–002–2 satisfies the Order No. 693 directive that NERC develop a continent-wide contingency reserve policy.[29] Also, we accept NERC's explanation in response to the NOPR that demand side resources that are technically capable can be included as contingency reserves, and therefore determine that Reliability Standard BAL–002–2 satisfies the Order No. 693 directive that demand side management may be used as a resource for contingency reserves.[30]

23. In addition, pursuant to section 215(d)(5) of the FPA, we direct NERC to develop modifications to Reliability Standard BAL–002–2 to address our concerns, discussed below, regarding the 15-minute ACE recovery period set forth in Requirement R1. We also direct NERC to collect and report on data pertaining to the occurrence of Balancing Contingency Events that trigger resets of the 90-minute Contingency Reserve Restoration Period under Requirement R3. We further direct NERC to study and submit a report to the Commission with findings regarding reliability risks associated with most severe single contingency exceedances that do not result in energy emergencies.

24. We discuss below the following issues raised in the NOPR and addressed in the comments: (A) Whether a reliability coordinator must expressly authorize extensions of the 15-minute ACE recovery period; (B) whether BAL–002–2 should be modified to require all contingency reserves to be restored within the 90-minute Contingency Reserve Restoration Period; (C) whether a reasonable obligation should be imposed for balancing authorities and reserve sharing groups to address scenarios involving megawatt losses above the most severe single contingency that do not cause energy emergencies; and (D) NERC's proposal to reduce from ''high'' to ''medium'' the violation risk factor for Requirements R1 and R2.

A. The 15-Minute ACE Recovery Period

NERC Petition

25. In its petition, NERC stated that the ''exemption'' from the 15-minute ACE recovery period in Requirement R1, Part 1.3.1 ''eliminates the existing conflict with EOP–011–1, as it removes undefined auditor discretion when assessing compliance and allows the responsible entity flexibility to maintain service to load while managing reliability.'' [31] NERC explained that this exemption does not eliminate an entity's obligation to respond to a Reportable Balancing Contingency Event, but rather it will ''simply allow more time to return the Reporting ACE to the defined limits than would otherwise be allowed.'' [32]

NOPR

26. In the NOPR, the Commission noted that Reliability Standard BAL–002–2, Requirement R1 obligates a responsible entity that experiences a Reportable Balancing Contingency Event to return its Reporting ACE to pre-defined values within the 15-minute Contingency Event Recovery Period. Further, the Reliability Standard does not expressly provide a definitive and enforceable deadline for ACE recovery during a reliability coordinator-declared Energy Emergency Alert accompanied by the depletion of the entity's contingency reserves to below its most severe single contingency.

27. The Commission stated that NERC's explanation for relief from the 15-minute ACE recovery period in Reliability Standard BAL–002–2 raises concerns, because it is unclear how or when an entity will prepare for a second contingency during the indeterminate extension of the 15-minute ACE recovery period that Requirement R1, Part 1.3 permits. The Commission observed that a balancing authority that is operating out-of-balance for an extended period of time is ''leaning on the system'' by relying on external resources to meet its obligations. That could affect other entities within an Interconnection, particularly if another entity is reacting to a grid event while unaware that the first entity has not restored its ACE.[33] While an extension of the 15-minute ACE recovery period may be appropriate under certain emergency conditions, the NOPR explained that, with a wide-area view and superior information and objectivity, the reliability coordinator is in a better position to decide whether to extend the ACE recovery period after an entity has met the criteria described in Requirement R1, Part 1.3.1.

28. Further, while Reliability Standard EOP–011–1, Requirement R3, requires the reliability coordinator to review balancing authority Operating Plans and notify a balancing authority of any ''reliability risks'' the reliability coordinator may identify with a time frame for the resubmittal of revised Operating Plans, the NOPR explained that the Reliability Standard does not require reliability coordinator approval of Operating Plans.

29. Therefore, the NOPR proposed to direct NERC to develop modifications to Reliability Standard BAL–002–2 that would require Reporting ACE recovery within the 15-minute Contingency Event Recovery Period unless the relevant reliability coordinator expressly authorizes an extension of the 15-minute ACE recovery period after the balancing authority has met the criteria described in Requirement R1, Part 1.3.1. The Commission's proposal included modifying Reliability Standard BAL–002–2 to identify the reliability coordinator as an Applicable Entity.

[28] NERC Petition, Ex. D (Implementation Plan) at 3.

[29] Order No. 693, FERC Stats. & Regs ¶ 31,242 at PP 340, 341 and 356.

[30] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 330, 335 and 356. In its comments NERC explained that ''[t]he proposed definition balances the need for flexibility to include a variety of demand side resources in measurements of Contingency Reserve with the need to define the types of demand side resources that are 'technically capable' to serve as contingency reserve.'' NERC Comments at 30.

[31] NERC Petition at 22.

[32] *Id.* at 24.

[33] NOPR, 155 FERC ¶ 61,180 at P 22.

Comments

30. NERC, EEI, NRECA, TVA, CEA, Joint Commenters, IESO and APS oppose the proposed directive. NERC asserts that the proposed directive is unnecessary because the Balancing Authority ACE Limit (BAAL) and a balancing authority's resource obligations under Reliability Standard BAL–001–2 discourage balancing authorities from leaning on the system during extensions of the Contingency Event Recovery Period. NERC explains that the BAAL:

> is a unique limit on a [balancing authority's] Reporting ACE based on Real-time interconnection frequency levels . . . since the loss of a resource would influence the Interconnection's frequency, the BAAL would adjust (or 'tighten') to assure that the Interconnection frequency remains in a safe range. The [balancing authority] must return its operations to within the 'tightened' BAAL within 30 minutes and thus would not be able to 'lean' on the Interconnection for any prolonged period.[34]

31. Further, NERC contends that the proposed role for reliability coordinators is unnecessary—in both emergency and non-emergency situations—because the reliability coordinator ''must maintain constant oversight of reliability within its [reliability coordinator] area and direct other responsible entities to take actions necessary to maintain reliability.'' [35]

32. EEI and Joint Commenters assert that the NOPR proposal ''would result in unnecessary duplication of requirements adding no tangible benefit to reliability while needlessly increasing the compliance burden.'' [36] Joint Commenters also note the infrequent nature of multiple-contingency events and Energy Emergency Alerts (EEAs), describing them as ''exceptional circumstances appropriate for an exemption from the typical measured requirements.'' [37] Joint Commenters state that in 2015 there were ten EEA Level 2 and Level 3 events, and that ''most [balancing authorities] experience no EEA events in a given year . . . allowing recovery exceptions during these exceptional circumstances would not create significant risk with respect to ACE recovery responsibilities.'' [38] Joint Commenters also contend that in a ''multiple-contingency event or during an EEA, there are likely scores of activities occupying the [reliability coordinator's] attention. Requiring the [balancing authority] and [reliability coordinator] to conduct a conference call during an EEA to discuss the merits of requests for additional ACE recovery time only complicates these already-challenging conditions.'' [39]

33. While supporting the notification and involvement of reliability coordinators, APS shares Joint Commenters' concern that requiring reliability coordinators to expressly authorize extensions of the 15-minute ACE recovery period could distract responsible entities from focusing on ''maintaining and recovering the reliability of the [bulk electric system].'' [40] Therefore, as an alternative to the NOPR proposal, APS proposes that balancing authorities obtain extensions of the 15-minute ACE recovery period under the extenuating circumstances described in Requirement R1, Part 1.3.1 by notifying the reliability coordinator of the conditions within its area and providing the reliability coordinator with an ACE recovery plan and target time period, but without obtaining express approval from the reliability coordinator.[41]

34. Idaho Power and BPA support the Commission's proposal to expressly require reliability coordinator authorization for extensions of the 15-minute Reporting ACE recovery period. Idaho power agrees with ''shifting more oversight to the Reliability Coordinator'' as the entity with the system-wide view.[42]

Commission Determination

35. We are persuaded by the commenters not to adopt the NOPR proposal that would require reliability coordinator authorization to extend the 15-minute ACE recovery period. As commenters explain, seeking the proposed reliability coordinator authorization while recovering from a disturbance has the potential to complicate an already-challenging situation. However, we continue to see a need to address the underlying concern expressed in the NOPR that a balancing authority that is operating out-of-balance for an extended period of time is ''leaning on the system'' by relying on external resources to meet its obligations. That scenario could affect other entities within an Interconnection, particularly if another entity is reacting to a grid event while unaware that the first entity has not restored its ACE. Accordingly, to address our concern without requiring reliability coordinator authorization, we adopt APS's proposed alternative that would require a balancing authority or reserve sharing group experiencing a depletion of contingency reserves below its most severe single contingency level during an Energy Emergency Alert to obtain an extension of the 15-minute ACE recovery period by informing the reliability coordinator of the circumstances and providing it with an ACE recovery plan and target time period.

36. We are persuaded that APS's approach is reasonable and adequately addresses concerns with extensions of the 15-minute ACE recovery period. By requiring notification of reliability coordinators and providing the reliability coordinator with an ACE recovery plan and target time period, we agree that the APS proposal ''would allow appropriate flexibility to [balancing authorities] when extenuating circumstances are present while providing [reliability coordinators] with the necessary data, communication, and coordination to fulfill their oversight responsibilities to the Interconnection.'' [43]

37. Accordingly, we direct NERC to develop modifications to Reliability Standard BAL–002–2, Requirement R1 to require balancing authorities or reserve sharing groups: (1) To notify the reliability coordinator of the conditions set forth in Requirement R1, Part 1.3.1 preventing it from complying with the 15-minute ACE recovery period; and (2) to provide the reliability coordinator with its ACE recovery plan, including a target recovery time. NERC may also propose an equally efficient and effective alternative.

B. The 90-Minute Contingency Reserve Restoration Period

NERC Petition

38. Reliability Standard BAL–002–2, Requirement R3 requires a balancing authority or reserve sharing group to restore its contingency reserves to at least its most severe single contingency before the end of the 90-minute Contingency Reserve Restoration Period.[44] Requirement R3 also provides for an automatic ''reset'' of the 90-

[34] NERC Comments at 10.

[35] *Id.* at 11 (citing Reliability Standards EOP–0011–1, EOP–003–2, IRO–001–4, IRO–002–4, IRO–008–2, and IRO–009–2).

[36] EEI Comments at 7; *see also* Joint Commenters Comments at 2–4.

[37] Joint Commenters Comments at 4.

[38] *Id.* (citing NERC's 2016 State of Reliability Report at 38).

[39] *Id.* at 3.

[40] APS Comments at 4–5.

[41] *Id.* at 5.

[42] Idaho Power Comments at 2; *see also* BPA Comments at 3.

[43] APS Comments at 8.

[44] NERC Petition, Ex. D (Implementation Plan). The 90-minute contingency reserve restoration period begins after the end of the 15-minute ACE restoration period under Requirement R1. Accordingly, responsible entities must restore contingency reserves within 105 minutes of the occurrence of a Reportable Balancing Contingency Event to comply with Requirement R3.

minute restoration period based upon any Balancing Contingency Event that occurs during the restoration period.[45]

NOPR

39. In the NOPR, the Commission proposed to direct NERC to modify Reliability Standard BAL–002–2 to ''eliminate the potential for unlimited resets and ensure that contingency reserves must be restored within the 90-minute Contingency Reserve Restoration Period.'' [46] The Commission sought comment on a possible alternative that would give a balancing authority or reserve sharing group ''credits'' for megawatt losses resulting from Balancing Contingency Events during the 90-minute restoration period, and allow an additional 90 minutes to restore reserves related to those megawatt losses.[47]

Comments

40. NERC, EEI, NRECA, CEA, Joint Commenters, IESO and APS support approval of Requirement R3 as filed. NERC asserts that, because of resource limitations and the potential compliance exposure to other Reliability Standards, including the Reporting ACE recovery requirements in Reliability Standard BAL–001–2, entities will not experience unlimited resets of the 90-minute restoration period.[48] NERC explains that ''[i]f an entity continues to trip units before full recovery of other units, the responsible entity would eventually fail to meet obligations under other Reliability Standards (including the requirement to recover ACE within 15 minutes under proposed BAL–002–2) and may eventually enter into an Emergency situation under [reliability coordinator] oversight . . .'' [49] NERC states that balancing authorities and reserve sharing groups would still be required to actively restore contingency reserves even after experiencing a Balancing Contingency Event during the 90-minute restoration period. Such events, according to NERC, ''would merely extend the Contingency Reserve Restoration Period to ensure that the responsible entity has adequate time to recover from consecutive losses.'' [50] NERC asserts that the Commission's proposed credit approach ''would be confusing and burdensome, and it may attract attention away from full and final restoration of the Contingency Reserve.'' [51] EEI agrees, adding that, ''in light of existing standards, this concern does not pose a sufficient risk to system reliability to merit NERC developing modifications to the standard.'' [52]

41. IESO and CEA claim that modifications to Reliability Standard BAL–002–2, Requirement R1 to eliminate the potential for unlimited resets are unnecessary. IESO questions the concern about unlimited resets of the Contingency Reserve Restoration Period, stating that it ''would suggest that multiple resource loss events could somehow benefit or unburden a [balancing authority's] obligation to restore the reserve level . . . [rather] the infrequent event of a reset occurrence is more appropriately viewed as simply not applying double jeopardy to a [balancing authority] that is already in a troubled situation.'' [53] IESO further states that a reset of the contingency reserve restoration period ''will simply provide the opportunity for the involved balancing authority to reassess the situation and act accordingly to replenish the contingency reserve'' to comply with BAL–002–2.[54] Both IESO and CEA assert that balancing authorities ''have a strong track record of acting in good faith.'' [55] CEA also notes that ''since a [balancing authority] does not own any resources, it cannot trigger or otherwise intentionally cause an additional loss of resource during the 90-minute period in order to reset the recovery period.'' [56]

42. Joint Commenters also oppose the Commission's proposal, explaining that ''following a unit trip that results in a [Balancing Contingency Event], the generator's telemetry is often invalid or suspect for some time, and if the [balancing authority] is unable to accurately quantify the actual MW loss, it may be required to take extreme actions, including shedding firm load, simply to meet the 90-minute contingency recovery requirement.'' [57] Joint Commenters claim that the ''likelihood of such an occurrence of multiple independent generation losses absent a catastrophic transmission failure is also very low.'' [58] Joint Commenters state that on average, one generator is lost in the Eastern Interconnection every 7 to 8 days, and ''the probability of four random large generator trips in the Eastern Interconnection in a two hour period was one in 350 years.'' [59]

43. BPA and Idaho Power support the Commission's proposal to require balancing authorities to restore contingency reserves within the 90-minute Contingency Event Recovery Period and receive ''credits'' for megawatt losses during the Contingency Event Recovery Period. TVA believes the potential for unlimited resets of the 90-minute restoration period is ''extremely remote,'' but TVA supports the credit proposal as a ''reasonable approach'' for managing multiple events during a contingency restoration period.

Commission Determination

44. The Commission determines not to adopt the NOPR proposal that NERC modify Reliability Standard BAL–002–2 to establish a firm requirement that responsible entities must restore contingency reserves within the 90-minute Contingency Reserve Restoration Period. Based on the comments, we are satisfied that occurrences of multiple Balancing Contingency Events during the 90-minute restoration period are rare and would be temporally bounded by the Reporting ACE recovery requirements in Reliability Standard BAL–001–2. We also acknowledge NERC's comment that intervening Balancing Contingency Events do not relieve balancing authorities and reserve sharing groups of their obligation to restore contingency reserves by the end of the reset period. Further, we acknowledge Joint Commenters' concern that determining the amount of megawatt losses to ''credit'' could be a distraction from the contingency reserve restoration effort, and the benefits from the proposed ''credit'' approach could be offset by unnecessary load shedding caused by potential confusion and

[45] Balancing Contingency Event means: ''Any single event described in Subsections (A), (B), or (C) below, or any series of such otherwise single events, with each separated from the next by one minute or less.

A. Sudden loss of generation:

a. Due to

i. unit tripping,

ii. loss of generator Facility resulting in isolation of the generator from the Bulk Electric System or from the responsible entity's System, or

iii. sudden unplanned outage of transmission Facility;

b. And, that causes an unexpected change to the responsible entity's ACE;

B. Sudden loss of an import, due to unplanned outage of transmission equipment that causes an unexpected imbalance between generation and Demand on the Interconnection.

C. Sudden restoration of a Demand that was used as a resource that causes an unexpected change to the responsible entity's ACE.'' NERC Petition Ex. D.

[46] NOPR, 155 FERC ¶ 61,180 at P 29.

[47] *Id.* PP 27–29.

[48] NERC Comments at 17–18.

[49] *Id.* at 17.

[50] *Id.* at 16.

[51] *Id.* at 18–19.

[52] EEI Comments at 8.

[53] IESO Comments at 4–5.

[54] *Id.* at 5; *see also* CEA Comments at 5.

[55] CEA Comments at 5; *see also* IESO Comments at 5.

[56] CEA Comments at 4; *see also* IESO Comments at 5.

[57] Joint Commenters Comments at 5.

[58] *Id.*

[59] Joint Commenters Comments at 6 (citing a probability analysis performed during the Reliability Standard BAL–003–1 development process using frequency event data for January 2006 to September 2012).

uncertainties associated with its implementation.

45. While, as stated in the NOPR, under some circumstances, extensions of the 90-minute Contingency Reserve Restoration Period may be appropriate, the comments do not fully address the concern expressed in the NOPR with resets resulting from additional megawatt losses following a Reportable Balancing Contingency Event. Therefore, although we determine not to direct modifications to the Reliability Standard, we conclude that the automatic reset provision of Reliability Standard BAL–002–2, Requirement R3 should be monitored for potential problems.

46. Accordingly, the Commission directs NERC to collect and report data pertaining to: (1) Additional megawatt losses following Reportable Balancing Contingency Events during the Contingency Reserve Restoration Period; and (2) the time periods for contingency reserve restoration under Requirement R3 and the number of resets of the 90-minute restoration period, and submit a report to the Commission two years following the first day of implementation of Requirement R3. After NERC reports on the data in a compliance filing, the Commission will consider what further action, if any, to take.

C. Exclusion of Megawatt Losses Above the Most Severe Single Contingency

NERC Petition

47. NERC's definition of Reportable Balancing Contingency Event limits balancing authority and reserve sharing group responsibility to megawatt losses between 80 percent and 100 percent of their most severe single contingency that occur within a one minute interval.[60] In its petition, NERC asserted that an ''integrated and coordinated'' suite of set of Reliability Standards (BAL–001–2, BAL–003–1, TOP–007–0, EOP–002–3, EOP–011–1, IRO–008–2, and IRO–009–2) will address the ''complex issues'' resulting from exceedances of the most severe single contingency.[61]

NOPR

48. In the NOPR, the Commission expressed concern about the exclusion of megawatt losses above a responsible entity's most severe single contingency from the scope of Reliability Standard BAL–002–2. The Commission questioned the assumption that all such megawatt losses, however small, warrant the proposed limitation on Reliability Standard BAL–002–2.[62] Further, while recognizing the protections that the related set of Reliability Standards may provide in extreme circumstances, the Commission noted that megawatt exceedances of the most severe single contingency that do not cause energy emergencies or otherwise implicate the set of Reliability Standards cited by NERC could result in a reliability gap; they also could create the potential for balancing authorities to lean on the Interconnection by indefinitely relying on neighboring balancing authorities' resources.[63]

49. In the NOPR, the Commission did not propose a specific approach but, rather, sought comment on how to address this possible reliability gap and whether to impose a reasonable obligation for balancing authorities and reserve sharing groups to address scenarios involving megawatt losses above the most severe single contingency that do not cause energy emergencies. The NOPR stated that, based on the comments, the Commission may direct that NERC develop a new or modified Reliability Standard to address that reliability gap.[64]

Comments

50. NERC, EEI, NRECA, TVA, BPA, CEA, Joint Commenters, IESO, and APS assert that concerns about a possible reliability gap are unfounded and urge the Commission to approve Reliability Standard BAL–002–2 as filed. NERC maintains that the limitation on the scope of Reliability Standard BAL–002–2 will not create a reliability gap and reasserts its view that an integrated, coordinated suite of Reliability Standards ''will address important reliability issues and prohibit entities from being able to 'lean' on the Interconnection when contingency events cause MW losses greater than an entity's MSSC.'' [65] NERC states that in situations involving megawatt losses above the most severe single contingency, reliability issues associated with ACE recovery and contingency reserve restoration become less important and other reliability issues ''such as transmission line-loading issues or frequency deviations'' create more immediate reliability threats and warrant priority status.[66]

51. EEI agrees with NERC, and also notes that exceedances of the most severe single contingency that do not create energy emergencies generally raise commercial, not reliability, issues. Further, EEI asserts that tightening Reliability Standard BAL–002–2 by requiring balancing authorities to address megawatt losses above the most severe single contingency ''could have unintended consequences that limit the flexibility of the [reliability coordinators] and [balancing authorities] to work together under the existing suite of standards to address such complex situations . . .'' [67]

52. Joint Commenters consider requiring balancing authorities and reserve sharing groups to address megawatt losses above the most severe single contingency as tantamount to requiring entities to operate to ''N–2'' or greater conditions. Joint Commenters assert that this would not only be expensive, estimating that doubling current contingency reserves across North America could cost $150–200 million/year based on average monthly cost of spinning reserves, it could adversely impact reliability. Joint Commenters state that N–2 events typically result from severe transmission events involving weather, major equipment or protection system failures. According to Joint Commenters, ''[i]n these situations, transmission security takes priority over maintaining ACE to zero. Excessive generation dispatch by [balancing authorities] could interfere with actions taken simultaneously by Transmission Operators and remote [balancing authorities] to resolve problems on the transmission system.'' [68]

53. Joint Commenters explain that the available data reflecting experience with megawatt losses subject to currently-effective Reliability Standard BAL–002–1 indicates that concerns about a reliability gap are overstated. According to Joint Commenters, of the 95 events involving most severe single contingency exceedances from 2012 to 2015, 91 were recovered in less than 15 minutes, and there were no Interconnected Reliability Operating Limit (IROL) exceedances of over 30 minutes in 2015, ''which demonstrates that the grid was secure even while zero ACE was not achieved within 15 minutes.'' [69]

54. CEA and IESO also oppose requiring balancing authorities or reserve sharing groups to address

[60] *See* NERC Petition, Ex. D (Implementation Plan) at 2.

[61] NERC Petition at 15.

[62] NOPR, 155 FERC ¶ 61,180 at P 33.

[63] *Id.*

[64] *Id.* at 34.

[65] NERC Comments at 20 (citing Reliability Standards BAL–001–2, BAL–003–1, EOP–002–3, EOP–011–1, IRO–001–4, TOP–001–3, IRO–008–2, and IRO–009–2).

[66] *Id.*

[67] EEI Comments at 11–12.

[68] Joint Commenters Comments at 9.

[69] *Id.* at 8 (citing NERC's 2016 State of Reliability Report).

megawatt losses exceeding the most severe single contingency, which they describe as an ''open-ended requirement.'' [70] CEA explains that it ''can severely affect a [balancing authority's] ability to suitably plan for potential contingency events. At an increased cost and at the expense of reduced market efficiency (more capacity is put aside for reserve as opposed to bidding into the energy market), a [balancing authority] could, in theory, design and operate to N–2, N–3 or greater events. However, this is simply not feasible.'' [71]

Commission Determination

55. The Commission remains concerned with relying on a ''coordinated suite of standards,'' as NERC maintains, to address reliability issues associated with megawatt losses above the most severe single contingency, considering that these other Reliability Standards do not specifically address restoration of ACE and Contingency Reserves. Further, the requirements for emergency Operating Plans in Reliability Standard EOP–011–1 do not specify any obligation for a balancing authority, transmission system operator, and/or reliability coordinator to take action to return ACE to zero for all operating conditions.

56. Additionally, Reliability Standards TOP–001–3, EOP–003–2, IRO–008–2, and IRO–009–2 pertain to actions needed to prevent or mitigate SOLs/IROLs caused by transmission line loading and other responsibilities of the transmission system operator and reliability coordinator. These Reliability Standards do not specifically address the balancing authority's responsibility to recover ACE by balancing load and generation, the purpose of Reliability Standard BAL–002–2.

57. The Commission finds the arguments and historical data provided by commenters to be helpful regarding whether there is a need to expand the requirements of Reliability Standard BAL–002–2 to address most severe single contingency exceedances that do not cause energy emergencies, as contemplated in the NOPR. Nonetheless, we believe the comments do not fully resolve open questions regarding the potential reliability impact of suspending the focus on the balancing of demand and load and ACE recovery—the purpose of Reliability Standard BAL–002–2—in exceedance scenarios.

58. The Commission determines that it is important to better understand the potential impacts of the approach taken in Reliability Standard BAL–002–2 when megawatt losses exceed the most severe single contingency without causing an energy emergency. Accordingly, we direct NERC to study the reliability risks associated with most severe single contingency exceedances that do not cause energy emergencies and submit a report with findings to the Commission two years from Reliability Standard BAL–002–2 implementation.

D. Violation Risk Factor for Requirements R1 and R2

NERC Petition

59. NERC proposed a ''medium'' violation risk factor for each requirement of Reliability Standard BAL–002–2.

NOPR

60. In the NOPR, the Commission expressed concern that NERC did not adequately justify lowering the assignment of the violation risk factor for Requirements R1 and R2 and proposed to direct that NERC assign a ''high'' violation risk factor to Reliability Standard BAL–002–2, Requirements R1 and R2.

61. Requirement R1 requires a balancing authority or reserve sharing group to deploy contingency reserves in response to all Reportable Balancing Contingency Events as the means for recovering Reporting ACE. Requirement R2 requires a balancing authority or reserve sharing group to develop, review and maintain a process within its Operating Plans for determining its most severe single contingency and to prepare to have contingency reserves equal to, or greater than, its most severe single contingency. Currently-effective Reliability Standard BAL–002–1 assigns a ''high'' violation risk factor for its Requirements R3 and R3.1, which NERC explained are analogous to proposed Requirements R1 and R2 in Reliability Standard BAL–002–2.[72]

62. In the NOPR, the Commission stated that NERC provided insufficient support for the proposed violation risk factor for Requirements R1 and R2. In justifying the assignment of a ''medium'' violation risk factor NERC asserted, without explanation, that a ''medium'' violation risk factor is ''consistent with other reliability standards (*i.e.,* BAL–001–2, BAL–003–1).'' [73] NERC also contended, without explanation, that Requirement R3 is similar in concept to the current enforceable BAL–001–0.1a standard Requirements R1 and R2, which have an approved medium violation risk factor, and approved reliability standards BAL–001–1 and BAL–003–1.[74] The conclusory statements in NERC's petition regarding the alleged similarities between Requirements R1 and R2 and other Reliability Standards, the NOPR stated, do not adequately explain the alleged bases for reducing the violation risk factor for Requirements R1 and R2 from the analogous Requirement R3 in the currently-effective Reliability Standard.

Comments

63. NERC, EEI and APS oppose raising the violation risk factor for Reliability Standard BAL–002–2 to ''high'' as proposed in the NOPR. NERC asserts that a failure to perform Requirements R1 and R2 ''in real time would produce results consistent with the Commission approved guidelines for a 'Medium' [violation risk factor] VRF . . . [that is] unlikely to lead to Bulk Electric System instability, separation, or cascading failures.'' [75] With regard to Requirement R1, NERC states that Reporting ACE ''is not an immediate measure of reliability, and the risk resulting from failure to meet Requirement R1'' is not likely to lead to instability, separation or cascading failures, the criteria for a high violation risk factor.[76] Likewise, NERC asserts that a ''medium'' violation risk factor is appropriate for Requirement R2, because the process responsible entities use for developing and reviewing their most severe single contingency ''does not directly contribute to reliability.'' [77] EEI agrees, adding that it ''also believes the medium VRF is justified because in most instances ACE is more reflective of commercial issues, particularly if frequency remains normal.'' [78]

64. APS also disagrees with the NOPR proposal because the Commission ''utilizes previous versions of reliability standards as a benchmark for the acceptability of VRFs [violation risk factors].'' [79] APS states that it is ''concerned that the assignment of a VRF based solely on the previous VRF assignments may contravene the current NERC Rules of Procedure and associated processes.'' [80] APS recommends that the Commission direct NERC to reevaluate

[70] CEA Comments at 5; IESO Comments at 7.

[71] CEA Comments at 5–6.

[72] NERC Petition, Ex. I (Mapping Document for BAL–002–2).

[73] NERC Petition, Ex. G (Analysis of Violation Risk Factors and Violation Severity Levels) at 4.

[74] *Id.*

[75] NERC Comments at 28.

[76] *Id.* at 29.

[77] *Id.* at 30.

[78] EEI at 13.

[79] APS Comments at 11.

[80] *Id.*

the VRFs for Reliability Standard BAL–002–2 ''against existing guidance.'' [81]

Commission Determination

65. We adopt the NOPR proposal regarding the violation risk factor for Reliability Standard BAL–002–2, Requirements R1 and R2. According to the Commission-approved criteria, a ''high'' violation risk factor should be assigned to a Reliability Standard requirement if violating the requirement could ''directly cause or contribute to the Bulk Electric System instability, separation, or a cascading sequence of failures, or could place the Bulk Electric System at an unacceptable risk of instability, separation or cascading failures.'' Reliability Standard BAL–002–2, Requirement R1 requires responsible entities to recover Reporting ACE following the occurrence of a Reportable Balancing Contingency Event, which supports Interconnection frequency in real-time.

66. We disagree with NERC that significant real-time differences between actual and scheduled interchange, the imbalance that Requirement R1 is intended to address, do not fall within the scope of the criterion for a ''high'' violation risk factor. The need for the bulk electric system to stabilize after changes in system frequency is critical for real-time system operations. NERC asserts that the status of Reporting ACE ''is not indicative of an immediate vulnerability.'' [82] We disagree. A violation of Requirement R1 jeopardizes system frequency, because it places the bulk electric system in a weakened operating condition with heightened risks of instability, separation, or cascading failures that could result from a second contingency.

67. With regard to Requirement R2, NERC acknowledges that actions under Requirement R2 ''support Requirement R1 by requiring responsible entities to develop, review, and maintain a process to determine the MSSC and to maintain, for deployment under Requirement R1, at least enough Contingency Reserve to cover the MSSC . . . [Requirement R2] is critical to the implementation of proposed Reliability Standard BAL–002–2.'' [83] Nonetheless, NERC asserts that Requirement R2 ''does not directly contribute to reliability.'' [84] We disagree, and conclude that the fundamental connection between Requirements R1 and R2 creates a significant role in maintaining reliability.

68. Accordingly, we direct NERC to assign a ''high'' violation risk factor to Reliability Standard BAL–002–2, Requirements R1 and R2.

V. Information Collection Statement

69. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[85] Upon approval of a collection(s) of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

70. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d) (2012). The NOPR solicited comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. No comments were received.

71. This final rule approves revisions to Reliability Standard BAL–002–1. NERC states in its petition that the Reliability Standard applies to balancing authorities and reserve sharing groups, and is designed to ensure that these entities are able to recover from system contingencies by deploying adequate reserves to return their ACE to defined values and by replacing the capacity and energy lost due to generation or transmission equipment outages. The Commission also approves NERC's seven new definitions and one proposed revised definition, and the retirement of currently-effective Reliability Standard BAL–002–1 immediately prior to the effective date of BAL–002–2.

72. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC Compliance Registry as of April 15, 2016. According to the NERC Compliance Registry, there are 70 balancing authorities in the Eastern Interconnection, 34 balancing authorities in the Western Interconnection and one balancing authority in the Electric Reliability Council of Texas (ERCOT). The Commission bases individual burden estimates on the time needed for balancing authorities and reserve sharing groups to maintain, annually, the operating process and operating plan that are required in the Reliability Standard. These burden estimates are consistent with estimates for similar tasks in other Commission-approved Reliability Standards. The following estimates relate to the requirements for this final rule in Docket No. RM16–7–000.

RM16–7–000

[BAL–002–2: Disturbance Control Standard—Contingency Reserve for recovery from a Balancing Contingency Event] [86]

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hours and cost per response [87]	Total annual burden hours and total annual cost	Cost per respondent ($)
	(1)	(2)	(1)*(2) = (3)	(4)	(3)*(4) = (5)	(5)÷(1)
BA/RSG: [88] Develop and Maintain annually, Operating Process and Operating Plans ...	105	1	105	8 $774	840 $81,262	$774

[81] *Id.*

[82] NERC Comments at 29.

[83] *Id.* at 29.

[84] *Id.* at 30.

[85] 5 CFR 1320.11.

[86] Reliability Standard BAL–002–2 applies to balancing authorities and reserve sharing groups. However, the burden associated with the balancing authorities complying with Requirements R1and R3 is not included within this table because the Commission accounted for it under Commission-approved Reliability Standard BAL–002–1.

[87] The estimated hourly cost (salary plus benefits) of $96.71 is an average based on Bureau of Labor Statistics (BLS) information (*http://www.bls.gov/oes/current/naics2_22.htm*) for an electrical engineer ($64.29/hour) and a lawyer ($129.12).

[88] BA = Balancing Authority; RSG = Reserve Sharing Group.

RM16–7–000—Continued

[BAL–002–2: Disturbance Control Standard—Contingency Reserve for recovery from a Balancing Contingency Event] [86]

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2) = (3)	Average burden hours and cost per response [87] (4)	Total annual burden hours and total annual cost (3)*(4) = (5)	Cost per respondent ($) (5)÷(1)
BA/RSG: Record Retention [89]	105	1	105	4 $112	420 $11,760	112
Total			210		1,260 $93,022	886

Title: FERC–725R, Mandatory Reliability Standard BAL–002–2.

Action: Collection of Information.

OMB Control No.: 1902–0268.

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

Frequency of Responses: On Occasion.

Necessity of the Information: This final rule approves Reliability Standard BAL–002–2, which is designed to ensure that a responsible entity, either a balancing authority or reserve sharing group, is able to recover from system contingencies by deploying adequate reserves to return its ACE to defined values and replacing the capacity and energy lost due to generation or transmission equipment outages. Reliability Standard BAL–002–2, Requirement R1 requires a responsible entity, either a balancing authority or reserve sharing group, experiencing a Reportable Balancing Contingency Event to deploy its contingency reserves to recover its ACE to certain prescribed values within the Contingency Event Recovery Period of 15 minutes. Requirement R2 requires a balancing authority or reserve sharing group to develop, review and maintain a process within its Operating Plans for determining its most severe single contingency and prepare to have contingency reserves equal to, or greater than, its most severe single contingency. Requirement R3 provides that, following a Reportable Balancing Contingency Event, the responsible entity shall restore its Contingency Reserve to at least its most severe single contingency, before the end of the Contingency Reserve Restoration Period of 90 minutes.

Internal Review: The Commission reviewed the Reliability Standard and has determined that it is necessary to implement section 215 of the FPA. The requirements of Reliability Standard BAL–002–2 should conform to the Commission's expectation for generation and demand balance throughout the Eastern and Western Interconnections as well as within the ERCOT Region.

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

VI. Environmental Analysis

74. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[90] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[91] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

VII. Regulatory Flexibility Act

75. The Regulatory Flexibility Act of 1980 (RFA) [92] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. As shown in the information collection section, the Reliability Standard applies to 105 entities. Comparison of the applicable entities with the Commission's small business data indicates that approximately 23 [93] are small business entities.[94] Of these, the Commission estimates that approximately five percent, or one of these 23 small entities, will be affected by the new requirements of the Reliability Standard.

76. The Commission estimates that the small entities affected by Reliability Standard BAL–002–2 will incur an annual compliance cost of up to $20,355 (*i.e.,* the cost of developing, and maintaining annually operating process and operating plans), resulting in a cost of approximately $885 per balancing authority and/or reserve sharing group. These costs represent an estimate of the costs a small entity could incur if the entity is identified as an applicable entity. The Commission does not consider the estimated cost per small entity to have a significant economic impact on a substantial number of small entities. Accordingly, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VIII. Document Availability

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

78. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of

[89] $28/hour, based on a Commission staff study of record retention burden cost.

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

[91] 18 CFR 380.4(a)(2)(ii).

[92] 5 U.S.C. 601–612.

[93] 21.73 percent of the total number of affected entities.

[94] The Small Business Administration sets the threshold for what constitutes a small business. Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. For the analysis in this final rule, we are using a 500 employee threshold for each affected entity. Each entity is classified as Electric Bulk Power Transmission and Control (NAICS code 221121).

this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

79. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

80. These regulations are effective April 3, 2017. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Issued: January 19, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

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

Appendix—Commenters

Abbreviation	Commenter
APS	Arizona Public Service Company.
BPA	Bonneville Power Administration.
CEA	Canadian Electricity Association.
EEI	Edison Electric Institute.
Idaho Power	Idaho Power.
IESO	Independent Electricity System Operator.
Joint Commenters	Alberta Electric System Operator, California Independent System Operator, Electric Reliability Council of Texas, Inc., Midcontinent Independent System Operator, Inc., PJM Interconnection, L.L.C., Southwest Power Pool, Inc., and IESO.
Naturener	Naturener USA, LLC.
NERC	North American Electric Reliability Corporation.
NRECA	National Rural Electric Cooperative Association.
TVA	Tennessee Valley Authority.

[FR Doc. 2017–02175 Filed 2–1–17; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 204

[Docket No. 2016–7]

Removal of Personally Identifiable Information From Registration Records

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is issuing a final rule to allow authors and claimants to replace or remove personally identifiable information (''PII'') from the Office's online registration catalog. This rule allows authors and claimants, or their authorized representatives, to request the replacement or removal of certain PII that is requested by the Office and collected on a registration application, such as a home addresses or personal phone numbers, from the Office's internet-accessible public catalog, while retaining that information in the Office's offline records as required by law. The rule also codifies an existing practice that removes extraneous PII, such as driver's license numbers, social security numbers, banking information, and credit card information, on the Office's own volition or upon request by authors, claimants, or their authorized representatives.

DATES: Effective March 6, 2017.

FOR FURTHER INFORMATION CONTACT: Cindy Abramson, Assistant General Counsel, by email at *ciab@loc.gov,* or Abioye Mosheim, Attorney Advisor, by email at *abmo@loc.gov.* Each can be reached by telephone by calling 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On September 15, 2016, the Copyright Office published a notice of proposed rulemaking (''NPRM'') to create procedures to request removal of certain ''personally identifiable information'' (''PII'') from the Office's registration records.[1] PII is generally considered to be any information that has the potential to identify a specific individual. The NPRM concerned two distinct categories of PII.

First, the Office requests and receives certain types of PII during the registration process (*e.g.,* dates of birth, addresses, telephone numbers, fax numbers, and email addresses). The collection of some of that information is mandated by statute or regulation; other information is optional.[2] This information is referred to herein as ''requested PII.''

Second, the Office does not request, but sometimes receives, additional PII that applicants include in their registration applications, such as driver's license numbers, social security numbers, banking information, and credit card information on their registration applications. Such information is extraneous and unnecessary for the processing and maintenance of copyright registration records. This information is referred to herein as ''extraneous PII.''

With respect to requested PII—information that the Copyright Office purposely collects as part of registration—the Copyright Act imposes certain obligations on the Office to preserve that information as part of the public record. The Act requires the Register to ensure that ''records of . . . registrations . . . are maintained, and that indexes of such records are prepared,'' and that ''[s]uch records and indexes . . . be open to public inspection,'' thus creating a public record. 17 U.S.C. 705(a), 705(b). The public record of copyright registrations serves several important functions. Chief among these is that the record

[1] 81 FR 63440 (Sept. 15, 2006).

[2] The Copyright Act requires the Office to gather the name and address of the copyright claimant; the name of the author(s), for works that are not anonymous or pseudonymous; the nationality or domicile of the author(s); and date(s) of death for deceased author(s). *See* 17 U.S.C. 409. The Act also gives the Register of Copyrights the authority to require applicants to supply any other information ''bearing upon the preparation or identification of the work or the existence, ownership, or duration of copyright.'' *Id.*

provides essential facts relevant to the copyright claim and information that a potential user of a copyrighted work can use to locate the work's owner. The registration record can also be a valuable aid for determining the term of copyright protection, by providing information such as the author's date of death, the publication date for the work, or the year of creation of the work.

A separate provision of the Act requires the Register of Copyrights to ''compile and publish . . . catalogs of all copyright registrations.'' 17 U.S.C. 707(a). For most of the Office's history, this catalog was maintained in paper form as the Catalog of Copyright Entries (''CCE''). Starting in 1994, however, the Office began providing the public with access to a computerized database of post-1977 copyright registration and recordation catalog entries via the internet. Then, in 1996, the Office decided to end publication of the printed CCE and publish copyright registration information solely via an online public catalog. *See* 61 FR 52465 (Oct. 7, 1996).

Initially, the PII revealed in the online public catalog was limited to names and, when volunteered, the author's year of birth. By 2007, however, with the advent of the Copyright Office's online registration system (''eCO''), a broader range of PII was pushed from the Office's registration records into the online public catalog, including the postal address of the claimants, and the name, postal address, email address and phone number of the person authorized to correspond about, and/or provide rights and permission to use, the registered work. *See* 72 FR 36883, 36887 (July 6, 2007). The current online public catalog, however, does not contain all of the information that is contained in the Office's full registration records. For instance, the online public catalog currently does not include the text of correspondence between the Office and the applicant. This information is maintained solely in the Office's offline records, although members of the public can obtain copies of it by making a request to the Office.

In addition, while the information in the online public catalog initially could only be searched and retrieved via the Office's Web site, in 2007 third parties began harvesting registration information, including PII, from the catalog, and posting that information on alternative Web sites, which were then indexed by search engines. As a result, authors and claimants began noticing their personal information appearing in internet search results, and began asking the Office to remove that information from the Office's online public catalog.

In 2008, the Office published a list of frequently asked questions (''FAQs'') on privacy to address some of these concerns.[3] In the FAQs, the Office stressed that, by statute, it was required to collect certain information as part of the registration application and maintain it as part of its public records. The FAQs advised the public that if they did not wish sensitive personal information to appear in the online public catalog, they should refrain from providing it during the registration process, if possible. Applicants were advised to instead consider providing non-personal information, such as information about a third-party agent, a post office box, or a non-personal email address. But the Office warned that, if the applicant provided personal information, it would be included in the online public catalog. Both the Web page to log in to the online registration system and the Web page to download paper application forms include links to the privacy FAQs. *See* eCO Registration System, Privacy: Copyright Public Records, *https://www.copyright.gov/registration/;* Forms, *https://www.copyright.gov/forms/; see also* U.S. Copyright Office, Compendium of U.S. Copyright Office Practices (''Compendium (Third)'') 205 (3d ed. 2014).

The Office's practices have differed with respect to extraneous PII—such as driver's license numbers, social security numbers, credit card information, and banking information—that applicants sometimes include on registration applications, even though the application does not require or request such information. Given the particular sensitivity of that information, and the fact that it is not requested as part of the registration application, the Office has developed an informal practice of removing extraneous PII from its registration records, including the online public catalog and the offline records, for no fee. During the registration process, the Office may remove extraneous PII, particularly if it is sensitive information, on its own volition. After the registration is complete, the Office will remove extraneous PII upon request. *See* Compendium (Third) 1804.2 (''If the registration specialist discovers a social security number, driver's license number, credit card number, or bank account number in the application, he or she will remove that information from the record without communicating with the applicant [and] [i]f this information is not discovered during the examination process . . . [t]he Office will remove [it] upon written request.'').

The NPRM explained in detail the rationale for and basic operation of the proposed rule. The Office solicited and received sixteen comments on the proposed rule. Having reviewed and carefully considered all of the comments received, the Copyright Office now issues a final rule that closely follows the proposed rule, with some alterations in response to the comments, as discussed below.

II. Discussion of Public Comments

Replacement of Name After Legal Name Change. The NPRM proposed to allow authors and claimants to request the removal of certain PII from the online public catalog only, and replace it with non-personal information. Names were specifically excluded from this category in the proposed rule. In the NPRM, the Office gave three reasons for not allowing authors or claimants to remove their names from the online public catalog, or replace an author or claimant's name with a pseudonym or an anonymous designation: (1) Changing or removing a name is not necessary to prevent privacy invasions as long as associated PII is removed; (2) allowing authors or claimants to alter their names in the online public catalog may lead to confusion regarding the term of copyright protection for the work; and (3) removal of a claimant's name could lead to confusion about the correct copyright term.

Two commenters urged the Office to allow authors or claimants to replace their names in the online public catalog. They argued that, for transgender individuals, disclosure of a birth name equals disclosure of transgender status. National Center for Transgender Equality (''NCTE'') Comments at 1; T. Brown Comments. Although it may be possible to use a supplementary registration to change one's name, both the original registration and the supplementary registration appear in the online registration record. According to these commenters, having a transgender individual's birth name and changed name both appear in the record could jeopardize the ''well-being and personal and professional life'' of a transgender individual, put them in danger, or subject them to ''employment discrimination, bodily harm and/or worse.'' T. Brown Comments. NCTE argued that not allowing a person who has received a legal name change to replace their original name with the legally changed name may affect victims of domestic violence as well. NCTE Comments at 1.

[3] *See* U.S. Copyright Office, *Privacy: Copyright Public Records, http://www.copyright.gov/help/faq/faq-privacy.html.*

NCTE suggested two revisions to the NPRM, one of which the Office reproduces here:

> 201.2(e)(2)(iii) Names of authors or claimants may not be removed or replaced with a pseudonym. Requests to substitute the prior name of the author or claimant with the current legal name of the author or claimant must be accompanied by official documentation of the legal name change.

NCTE Comments at 1. The Office finds compelling NCTE's and T. Brown's arguments for allowing a name change in the online record, and adopts the above suggested language in the final rule.

NCTE also recommended that the Office not include a note in the online record indicating that the legal name has been modified because it could pose safety and privacy concerns to transgender individuals. NCTE Comments at 3. While the Office takes seriously these concerns, as mentioned in the NPRM, the Copyright Act imposes certain obligations on the Office to preserve information as part of the public record. *See* 17 U.S.C. 705(a), 705(b). Pursuant to the new rule, ''a note indicating that the online record has been modified will be added to the online registration record.'' 17 U.S.C. 201.2(e)(6). This note, however, will merely indicate that a change was made to the record but will not specify whether or not a change to the legal name was made. The Office believes that this clarification addresses NCTE's concerns.

Retention of Original PII in Offline Records. The NPRM also proposed that the original information would be maintained in the Office's offline records and would be available for public inspection by visitors to the Copyright Office and upon request, consistent with the Office's statutory responsibilities to maintain such records and make them available to the public. The NPRM sought to strike an appropriate balance between the public's interest in a robust online record and concerns of privacy and safety in individual cases.

The Software and Information Industry Association (''SIIA'') expressed concern about this aspect of the rule, commenting that ''the very reason for the registration data is to enable the licensing of works'' and the ''proposal makes that more difficult.'' SIIA Comments at 3. In SIIA's view, ''[t]hose seeking information would have to hire someone in Washington to physically go to the Copyright Office records and search them.'' *Id.* The Office, however, crafted the rule with that exact concern in mind. The Office does not intend to make it more difficult to license works, which is why the rule does not permit a claimant to eliminate address information from the online public catalog, but instead only allows for the replacement of a home address with a verifiable substitute address, such as a current post office box or third-party address. As the NPRM explained, ''allowing the wholesale removal of a claimant address would impede the public's ability to contact a copyright owner to obtain permission to use the work.'' 81 FR at 63441. The Office has made this point even more explicit in the final rule.

With respect to other types of PII, alternate information must be provided, unless a stringent standard is met: Specifically, the requester must demonstrate that the stated concern *substantially* outweighs the need for the information to remain in the public record. As the NPRM explained, ''[t]his higher standard is warranted because removing information entirely from the online public catalog would result in a diminished record available for search via the internet.'' 81 FR at 63442. The Office does not anticipate that it will liberally grant such requests. Additionally, under existing practices, one does not have to travel to Washington to physically search records. Members of the public may obtain a search for and copies of registration records upon request and have the results sent to them via U.S. mail or courier. *See generally* Compendium (Third) 2406, 2407.

The Copyright Alliance also recommended revising the rule to allow for bulk access to offline records. Copyright Alliance Comments at 4. The Office's current technology systems does not permit bulk access. While the Office declines to adopt this suggestion under the PII rule, it will consider the recommendation as part of its broader technology modernization efforts.

Various Concerns Regarding Collection of PII in Registration Process. Some commenters including the National Writers Union and the American Society of Journalists and Authors (''NWU/ASJA''), stated that the Office should not require an author or claimant to make any contact information publicly available. *See* NWU/ASJA Comments at 4–5, 7–8; Alexander Kunz Comments. Other commenters asked the Office to do away with the collection of physical addresses and only collect email addresses. *See e.g.,* V.E. Anonymous Comments; Helen Zhang Comments (stating that even providing a substitute non-personal address or P.O. Box may give an unwanted party the author or claimant's approximate location). But, as stated in the NPRM, the Office is mandated by statute to collect and make public a claimant's address. *See* 17 U.S.C. 409(1) (''The application for copyright registration shall . . . include the name and address of the copyright claimant.''). Given that section 409(1) was added to the Copyright Act before electronic mail existed, the Office interprets that provision to mean that the claimant must provide a physical mailing address—not an electronic mailing address. *See* H.R. Rep. 155–156. Therefore, the Office declines to adopt any regulation that would do away with the collection and maintenance of physical claimant addresses. That said, the Office has always advised in its Privacy FAQs that the inclusion of any physical address other than the claimant's address is optional; accordingly, applicants are advised to think carefully before providing a claimant's personal physical address, and are instead encouraged to provide a third-party agent's address, a post office box, or a non-personal email address.

Several commenters recommended that the Office amend the rule to either provide notice to applicants at the time of registration that their PII will be on the internet and to advise them of their options for avoiding publication of their PII, or to provide an ''opt out'' mechanism on the registration application that would allow the applicant to opt out of providing his or her PII. *See e.g.,* Copyright Alliance Comments at 3; Alexander Kunz Comments. But, as mentioned in the NPRM and above, the Office already provides links to its Privacy FAQs on both the online registration application and the Web page that houses the downloadable paper registration applications. Additionally, eCO and each paper registration application contains a Privacy Act Notice that advises the applicant that by completing the application it is authorizing the Office to collect the applicant's PII and consenting to routine uses of the PII, including publication to give legal notice of the applicant's copyright claim.

The Copyright Alliance suggested that the rule provide a ''do not contact'' mechanism at the time of registration. Copyright Alliance Comments at 3. It stated that ''providing registrants with the option of indicating they do not wish to be contacted . . . should decrease the amount of unwanted contact and encourage creators to feel more comfortable about providing their information.'' Copyright Alliance Comments at 3. Without any empirical evidence to support such an assertion, the Office declines to adopt this

recommendation; it is unclear how providing PII but asking members of the public to not contact an author using that PII will actually deter unwanted contact. Additionally, eCO is not currently designed to permit a ''do not contact'' option at registration, and adding such an option would require updates to the eCO system. Accordingly, at this time the Office declines to adopt the Copyright Alliance's ''do not contact'' suggestion, but may consider it at a later date as part of its broader technology modernization efforts.

Finally, the Office notes that NWU/ASJA made several comments not relevant to the NPRM, including that the Office should repeal the requirement of registration for enforcement and remedies and withdraw proposed orphan works legislation. *See* NWU/ASJA Comments at 3. NWU/ASJA also alleges that the requirement to make contact information public is a prohibited formality under the Berne Convention and that the Office's gathering and maintaining information on a registration application violates the Privacy Act because the information gathered is not relevant and necessary to accomplish the mission of the Copyright Office, and is not mandated by statute. *See* NWU/ASJA Comments at 4–5, 7. Although the Office does not agree that these requirements violate Berne or the Privacy Act, this rulemaking is not the proper forum in which to address these concerns in detail. The requirements that NWU/ASJA complain of, however, are part of the Copyright Act, and the Office cannot create exceptions to them as part of this rulemaking.

''*Verified*'' *Addresses.* As the NPRM explained, the proposed rule does not allow a claimant to eliminate address information from the online public catalog, but instead would only allow for the replacement of a home address with a verifiable substitute address, such as a current post office box or third-party address.

One commenter, Music Reports, recommended the following change to the proposed rule: The Office should require the substitute address information be ''verified''—not just be verifiable—at time of application, by requiring notarized documentation of the requester's identity, and by requiring the requester to provide evidence that one is able to receive mail at that address. Music Reports Comments at 2. The Office believes that adding this burden is unnecessary. The rule already requires that the requester provide the Office with ''verifiable'' information, meaning that the requester will have to aver that the replacement address is one at which the author and/or claimant can receive mail. And the requester is required to append an affidavit to the request stating as much. Therefore, the Office declines to adopt Music Reports recommendations in the final rule.

Fees. The NPRM proposed that the cost for filing an initial request for replacement or removal of requested PII would be $130, and the fee for reconsideration of denied requests for replacement or removal of requested PII would be $60. There would be no fee for requests to remove extraneous PII. For reconsiderations, the NPRM proposed a flat fee of $60 per request, regardless of the number of registration records referenced in the request. As the NPRM stated, both fees are non-refundable.

Several commenters thought the initial fee for requesting the replacement or removal of requested PII was unreasonable. *See e.g.,* Copyright Alliance Comments at 3; Cletus Price Comments; Alexander Kunz Comments; Helen Zhang Comments. The Office calculated the fee, however, after carefully considering the time and labor required to review and process these requests, including the salaries of junior and senior staff who will take part in the review, draft the decisions, and perform the data entry; costs associated with docketing and responding to requests via U.S. mail; system costs related to entering changes into the online public catalog as well as updating the offline registration records; and costs associated with printing a new registration certificate.

One commenter stated that ''[r]equiring [an] applicant to submit requested PII then wait for the Office to publish it in its online records and then requiring the individual to request and pay $130 to have some of it taken down would be a very inconvenient process.'' Cletus Price Comments. But the Office notes that PII does not necessarily need to be provided as part of the initial registration application. The registration application instructions, as well as the above-mentioned privacy FAQs, warn applicants at the time of registration that any PII provided on the registration application will be made public and that, in order to avoid any issues regarding security or privacy, to provide non-personal information (like a P.O. Box or business address) where possible, or where the information is optional, to not provide PII at all.

List of Subjects in 37 CFR Parts 201 and 204

Copyright, Information, Privacy, Records.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 204 of 37 CFR chapter II as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read, in part, as follows:

Authority: 17 U.S.C. 702.

* * * * *

■ 2. In § 201.1, revise the section heading and add paragraph (c)(8) to read as follows:

§ 201.1 Communication with the Copyright Office.

* * * * *

(c) * * *

(8) *Requests to remove PII from registration records.* Requests to remove personally identifiable information from registration records pursuant to §§ 201.2(e) and (f) should be addressed to: U.S. Copyright Office, Associate Register of Copyrights and Director of the Office of Public Information and Education, P.O. Box 70400, Washington, DC 20024–0400. Requests should be clearly labeled ''Request to Remove Requested PII,'' ''Request for Reconsideration Following Denial of Request to Remove Requested PII,'' or ''Request to Remove Extraneous PII,'' as appropriate.

■ 3. In § 201.2, add paragraphs (e) and (f) to read as follows:

§ 201.2 Information given by the Copyright Office.

* * * * *

(e) *Requests for removal of requested personally identifiable information from the online public catalog.* (1) In general, an author, claimant of record, or the authorized representative of the author or claimant of record may submit a request to remove certain categories of personally identifiable information (''PII'') described in paragraph (e)(2) of this section from the Copyright Office's online public catalog by following the procedure set forth in paragraph (e)(3) of this section. Where the requester provides verifiable, non-personally identifiable substitute information to replace the PII being removed, the Office will grant the request unless it determines that the need to maintain the original information in the public record substantially outweighs the safety, privacy, or other stated concern. If the requester does not provide verifiable, non-personally-identifiable substitute information, the Office will grant the request only if the safety, privacy, or other stated concern substantially

outweighs the need for the information to remain in the public record. The Office will review requests by joint authors or claimants on a case-by-case basis.

(2) Categories of personally identifiable information that may be removed from the online public catalog include names, home addresses, personal telephone and fax numbers, personal email addresses, and other information that is requested by the Office as part the copyright registration application except that:

(i) Requests for removal of driver's license numbers, social security numbers, banking information, credit card information and other extraneous PII covered by paragraph (f) of this section are governed by the provisions of that paragraph.

(ii) Requests to remove the address of a copyright claimant must be accompanied by a verifiable substitute address. The Office will not remove the address of a copyright claimant unless such a verifiable substitute address is provided.

(iii) Names of authors or claimants may not be removed or replaced with a pseudonym. Requests to substitute the prior name of the author or claimant with the current legal name of the author or claimant must be accompanied by official documentation of the legal name change.

(3) Requests for removal of PII from the online catalog must be in the form of an affidavit, must be accompanied by the non-refundable fee listed in § 201.3(c), and must include the following information:

(i) The copyright registration number(s).

(ii) The name of the author and/or claimant of record on whose behalf the request is made.

(iii) Identification of the specific PII that is to be removed.

(iv) If applicable, verifiable non-personally-identifiable substitute information that should replace the PII to be removed.

(v) In the case of requests to replace the names of authors or claimants, the request must be accompanied by a court order granting a legal name change.

(vi) A statement providing the reasons supporting the request. If the requester is not providing verifiable, non-personally-identifiable substitute information to replace the PII to be removed, this statement must explain in detail the specific threat to the individual's personal safety or personal security, or other circumstances, supporting the request.

(vii) The statement, ''I declare under penalty of perjury that the foregoing is true and correct.''

(viii) If the submission is by an authorized representative of the author or claimant of record, an additional statement, ''I am authorized to make this request on behalf of [name of author or claimant of record].''

(ix) The signature of the author, claimant of record, or the authorized representative of the author or claimant of record.

(x) The date on which the request was signed.

(xi) A physical mailing address to which the Office's response may be sent (if no email is provided).

(xii) A telephone number.

(xiii) An email address (if available).

(4) Requests under this paragraph (e) must be mailed to the address listed in § 201.1(c).

(5) A properly submitted request will be reviewed by the Associate Register of Copyrights and Director of the Office Public Information and Education or his or her designee(s) to determine whether the request should be granted or denied. The Office will mail its decision to either grant or deny the request to the address indicated in the request.

(6) If the request is granted, the Office will remove the information from the online public catalog. Where substitute information has been provided, the Office will add that information to the online public catalog. In addition, a note indicating that the online record has been modified will be added to the online registration record. A new certificate of registration will be issued that reflects the modified information. The Office will maintain a copy of the original registration record on file in the Copyright Office, and such records shall be open to public inspection and copying pursuant to paragraphs (b), (c), and (d) of this section. The Office will also maintain in its offline records the correspondence related to the request to remove PII.

(7) Requests for reconsideration of denied requests to remove PII from the online public catalog must be made in writing within 30 days from the date of the denial letter. The request for reconsideration, and a non-refundable fee in the amount specified in § 201.3(c), must be mailed to the address listed in § 201.1(c). The request must specifically address the grounds for denial of the initial request. Only one request for reconsideration will be considered per denial.

(f) *Requests for removal of extraneous PII from the public record.* Upon written request, the Office will remove driver's license numbers, social security numbers, banking information, credit card information, and other extraneous PII that was erroneously included on a registration application from the public record. There is no fee for this service. To make a request, the author, claimant, or the authorized representative of the author or claimant, must submit the request in writing using the contact information listed in § 201.1(c). Such a request must name the author and/or claimant, provide the registration number(s) associated for the record in question, and give a description of the extraneous PII that is to be removed. Once the request is received, the Office will remove the extraneous information from both its online and offline public records. The Office will not include any notation of this action in its records.

■ 4. In § 201.3, add paragraph (c)(19) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) * * *

Registration, recordation and related services	Fees ($)
* * * * * * *	
(19) Removal of PII from Registration Records	
(i) Initial request, per registration record	130
(ii) Reconsideration of denied requests, flat fee	60
* * * * * * *	

* * * * *

PART 204—PRIVACY ACT: POLICIES AND PROCEDURES

■ 5. The authority citation for part 204 continues to read as follows:

Authority: 17 U.S.C. 702; 5 U.S.C. 552(a).

■ 6. Revise § 204.7 to read as follows:

§ 204.7 Request for correction or amendment of records.

(a) Any individual may request the correction or amendment of a record pertaining to her or him. Requests for the removal of personally identifiable information requested by the Copyright Office as part of an application for copyright registration are governed by § 201.2(e) of this chapter. Requests for the removal of extraneous personally identifiable information, such as driver's license numbers, social security numbers, banking information, and credit card information from registration records are governed by § 201.2(f) of this chapter. With respect to the correction or amendment of all other information contained in a copyright registration, the set of procedures and related fees are governed by 17 U.S.C. 408(d) and § 201.5 of this chapter. With respect to requests to amend any other record that an individual believes is incomplete, inaccurate, irrelevant or untimely, the request shall be in writing and delivered either by mail addressed to the U.S. Copyright Office, Supervisory Copyright Information Specialist, Copyright Information Section, Attn: Privacy Act Request, P.O. Box 70400, Washington, DC 20024–0400, or in person Monday through Friday between the hours of 8:30 a.m. and 5 p.m., eastern time, except legal holidays, at Room LM–401, Library of Congress, U.S. Copyright Office, 101 Independence Avenue SE., Washington, DC 20559–6000. The request shall explain why the individual believes the record to be incomplete, inaccurate, irrelevant, or untimely.

(b) With respect to requests for the correction or amendment of records that are governed by this section, the Office will respond within 10 working days indicating to the requester that the requested correction or amendment has been made or that it has been refused. If the requested correction or amendment is refused, the Office's response will indicate the reason for the refusal and the procedure available to the individual to appeal the refusal.

Dated: January 23, 2017.

Karyn Temple Claggett,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla Hayden,

Librarian of Congress.

[FR Doc. 2017–02238 Filed 2–1–17; 8:45 am]

BILLING CODE 1410–30–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 16–306, GN Docket No. 12–268; DA 17–34]

Transition Progress Report Form and Filing Requirements for Stations Eligible for Reimbursement From the TV Broadcast Relocation Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) describes the information that must be provided in periodic progress reports (FCC Form 2100—Schedule 387 (Transition Progress Report)) by full power and Class A television stations that are eligible to receive payment of relocation expenses from the TV Broadcast Relocation Fund in connection with their being assigned to a new channel through the Incentive Auction. The Commission previously determined that reimbursable stations must file reports showing how the disbursed funds have been spent and what portion of the stations' construction in complete. These Transition Progress Reports will help the Commission, broadcasters, those involved in construction of broadcast facilities, other interested parties, and the public to assess how disbursed funds have been spent and to monitor the construction of stations.

DATES: Effective February 2, 2017.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *Joyce.Bernstein@fcc.gov,* (202) 418–1647, or Kevin Harding, *Kevin.Harding@fcc.gov,* (202) 418–7077.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 17–34, MB Docket No. 16–306, GN Docket No. 12–268, released January 10, 2017. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text of this document is also available for download at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0110/DA-17-34A1.pdf.*

Synopsis

The Media Bureau (Bureau) announces that each full power and Class A television station that is eligible for reimbursement of its relocation costs from the TV Broadcast Relocation Fund established by the Middle Class Tax Relief and Job Creation Act of 2012 must periodically file an FCC Form 2100—Schedule 387 (Transition Progress Report) that is attached as Appendix A to the Public Notice. The appendix is available at *https://apps.fcc.gov/edocs_public/attachmatch/DA-17-34A1.docx.* Reimbursable stations must file Transition Progress Reports using the Commission's electronic filing system starting with first full calendar quarter after completion of the Incentive Auction and on a quarterly basis thereafter. In addition to these quarterly reports, reimbursable stations must file the reports: (1) 10 weeks before the end of their assigned construction deadline; (2) 10 days after they complete all work related to construction of their post-auction facilities; and (3) five days after they cease broadcasting on their pre-auction channel. Once a station has filed Transition Progress Reports certifying that it has completed all work related to construction of its post-auction facilities and has ceased operating on its pre-auction channel, it will no longer be required to file reports.

In the *Incentive Auction R&O,* the Federal Communications Commission (Commission) adopted rules and procedures for conducting the broadcast television incentive auction. *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* GN Docket No. 12–268, Report and Order, 79 FR 48442, August 15, 2014. The incentive auction is composed of a reverse auction in which broadcasters offer to voluntarily relinquish some or all of their spectrum usage rights, and a forward auction of new, flexible-use licenses suitable for providing mobile broadband services. The reverse auction incorporates a repacking process to reorganize the broadcast television bands so that the television stations that remain on the air after the transition will occupy a smaller portion of the ultra-high frequency (UHF) band, thereby clearing contiguous spectrum that will be repurposed as the 600 MHz

Band for flexible wireless use. After bidding concludes, the Media and Wireless Telecommunications Bureaus will release the *Closing and Reassignment Public Notice* which, among other things, will announce the results of the repacking process and identify the channel reassignments of television channels. The *Closing and Reassignment Public Notice* will also establish the beginning of the 39-month post-auction transition period (transition period). By the end of the transition period, all stations reassigned to new channels must complete construction of their post-auction channel facilities, commence operation on their post-auction channel, cease operation on their pre-auction channel, and file a license application.

Most stations that incur costs as a result of being reassigned to new channels will be eligible for reimbursement from the Reimbursement Fund. In the *Incentive Auction R&O,* the Commission determined that reimbursable stations will be required, on a regular basis, to provide progress reports to the Commission showing how the disbursed funds have been spent and what portion of their construction is complete, and directed the Media Bureau to develop a form for such progress reports and set filing deadlines. The Media Bureau's Public Notice describes the information that must be provided in the Transition Progress Reports, and when and how the progress reports must be filed. The Transition Progress Report requires reimbursable stations to certify that certain steps towards construction of their post-auction facilities either have been completed or are not required. Some questions/items are meant to gather information regarding stations' completion of tasks necessary to meet major expenditure and construction milestones, such as taking delivery of specific pieces of equipment or completing all necessary permitting and tower work. Other questions require broadcasters to identify potential problems which they believe may make it difficult for them to meet their construction deadlines. These Transition Progress Reports will help the Commission, broadcasters, those involved in the construction of broadcast facilities, and other interested parties to assess how disbursed funds have been spent and to monitor the construction of stations.

Paperwork Reduction Act of 1995 Analysis: This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate **Federal Register** Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, *see* 44 U.S.C. 3507.

The Commission will send a copy of the document, DA 17–34, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Initial Regulatory Flexibility Act Analysis: As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities of the policies and rules proposed in the Public Notice (*Progress Report Form PN*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Progress Report Form PN.* The Commission will send a copy of the *Progress Report Form PN,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *Progress Report Form PN* and IRFA (or summaries thereof) will be published in the **Federal Register**.

The Regulatory Flexibility Act of 1980, as amended (''RFA''), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rule Changes

The Federal Communications Commission (Commission) adopted a 39-month transition period during which television stations that are assigned to new channels in the incentive auction *must* construct their new facilities. The Commission determined that reassigned television stations that are eligible for reimbursement from the TV Broadcast Relocation Fund are required, on a regular basis, to provide progress reports to the Commission showing how the disbursed funds have been spent and what portion of construction is complete. The Commission directed the Media Bureau (Bureau) to develop a form for such progress reports and set the filing deadlines for such reports. The *Progress Report Form PN* describes the information that must be provided by these stations, and when and how the progress reports must be filed.

The Bureau proposes to require that reassigned television stations that are not eligible for reimbursement from the TV Broadcast Relocation Fund provide the same progress reports to the Commission on the same schedule as that specified for stations eligible for reimbursement. The Transition Progress Report in Appendix A requires reassigned stations to certify that certain steps toward construction of their post-auction channel either have been completed or are not required, and to identify potential problems which they believe may make it difficult for them to meet their construction deadlines. The information in the progress reports will be used by the Commission, stations, and other interested parties to monitor the status of reassigned stations' construction during the 39-month transition period.

B. Legal Basis

The proposed action is authorized pursuant to sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

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

provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

Television Broadcasting. This economic census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of $25,000,000 or less, and 99 had annual receipts of more than $25,000,000. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,386 stations. Of this total, 1,221 stations (or about 88 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of television broadcast stations are small entities.

We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

Class A TV Stations. The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations. As noted above, the SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts. The Commission has estimated the number of licensed Class A television stations to be 418. Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Bureau proposes that reassigned stations that are not eligible for reimbursement file the Transition Progress Report in Appendix A on a quarterly basis, beginning for the first full quarter after the release of a public notice announcing the completion of the incentive auction, as well as 10 weeks before their construction deadline, 10 days after they complete construction of their post-auction facility, and five days after they cease broadcasting on their pre-auction channel. Once a station has ceased operating on its pre-auction channel, it would no longer need to file reports. We seek comment on the possible burdens the reporting requirement would place on small entities. Entities, especially small businesses, are encouraged to quantify, if possible, the costs and benefits of the proposed reporting requirement.

E. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

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

In general, alternatives to proposed rules or policies are discussed only when those rules pose a significant adverse economic impact on small entities. We believe the burdens of the proposed reporting requirement are minimal and, in any event, are outweighed by the potential benefits of allowing for monitoring of the post-auction transition. In particular, the intent is to allow the Commission, broadcasters, and other interested parties to more closely monitor that status of construction during the transition, and focus resources on ensuring successful completion of the transition by all reassigned stations and continuity of over-the-air television service. Although the proposal to require reassigned stations that are not eligible for reimbursement to file regular progress reports during the transition may impose additional burdens on these stations, we believe the benefits of the proposal (such as further facilitating the successful post-incentive auction transition) outweigh any burdens associated with compliance

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

Federal Communications Commission.

Thomas Horan,

Chief, Media Bureau.

[FR Doc. 2017–02218 Filed 2–1–17; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 82, No. 21
Thursday, February 2, 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.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1507

[Docket No. CPSC–2006–0034]

Amendments to Fireworks Regulations

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) proposes to amend its regulations regarding fireworks devices under the Federal Hazardous Substances Act. The proposed amendments are based on the Commission's review of its existing fireworks regulations, the current fireworks market, changes in technology, existing fireworks standards, and safety issues associated with fireworks devices. The proposed amendments would create new requirements and modify or clarify existing requirements. Some of the proposed revisions would align with existing fireworks standards or codify the Commission's existing testing practices. The Commission believes that the proposed requirements would improve consumer safety by codifying limits, test procedures, and requirements that would reduce the risk of injury to consumers and clarifying existing requirements to promote compliance.

DATES: Submit comments by April 18, 2017.

ADDRESSES: Comments, identified by Docket No. CPSC–2006–0034, may be submitted electronically or in writing:

Electronic Submissions: The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov,* by following the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.*

Written Submissions: Submit written comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions must include the agency name and docket number for this proposed rulemaking. All comments may be posted to *http://www.regulations.gov* without change, including any personal identifiers, contact information, or other personal information. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you submit such information, the Commission recommends that you do so by mail, hand delivery, or courier.

Docket: To read background documents or comments regarding this proposed rulemaking, go to: *http://www.regulations.gov,* insert docket number CPSC–2006–0034 in the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Rodney Valliere, Project Manager, Directorate for Laboratory Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2526; email: *RValliere@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Hazardous Substances Act (FHSA; 15 U.S.C. 1261–1278) authorizes the CPSC to regulate hazardous substances, which include fireworks devices. 15 U.S.C. 1262. The Commission assumed responsibility for administering the FHSA on May 14, 1973. *Id.* at 2079(a). Previously, the U.S. Department of Health, Education, and Welfare exercised this authority and the U.S. Food and Drug Administration (FDA), an agency within that department, issued regulations governing fireworks and other hazardous substances. When the Commission assumed responsibility, it adopted the existing FDA regulations, transferring them from 21 CFR part 191 to 16 CFR part 1500. 38 FR 27012 (Sept. 27, 1973). These regulations included requirements limiting the pyrotechnic composition of fireworks devices ''intended to produce audible effects'' to two grains; carving out an exception to that regulatory limit for wildlife management purposes; and exempting certain packaged fireworks assortments from full labeling requirements for hazardous substances under the FHSA.

Since assuming responsibility for the FHSA, the Commission has added provisions to the fireworks regulations, which are now in 16 CFR parts 1500 and 1507. These additions include labeling requirements; prohibitions of certain chemicals; performance requirements for specific devices and features; bans (except for wildlife management purposes) on firecrackers that contain more than 50 milligrams (mg) (0.772 grains) of pyrotechnic composition, specific devices, and devices that do not comply with part 1507; bans on reloadable tube aerial shell devices with shells larger than 1.75 inches in outer diameter; requirements for a stability test for large multiple-tube fireworks devices; and an increase in the longest permissible time for a fuse to burn to 9 seconds. 61 FR 67197 (Dec. 20, 1996); 61 FR 13084 (Mar. 26, 1996); 56 FR 37831 (Aug. 9, 1991); 49 FR 50374 (Dec. 28, 1984); 41 FR 22931 (June 8, 1976).

The Commission has also taken steps to review the fireworks regulations, generally, in more recent years. CPSC issued an advance notice of proposed rulemaking (ANPR) in 2006 to explore alternatives for addressing fireworks-related injuries. 71 FR 39249 (July 12, 2006). In 2015 and 2016, the Commission reviewed all of its fireworks regulations to identify revisions or clarifications that would make them more effective at protecting the public, reflect the current market and technology, reduce burdens, and coordinate with other federal and industry standards. This notice of proposed rulemaking (NPR) is the result of that assessment.

In addition, on September 6, 2016, the Commission issued a proposed interpretive rule regarding the method of determining whether a fireworks device is ''intended to product audible effects,'' for purposes of 16 CFR 1500.17(a)(3). 81 FR 61146 (Sept. 6, 2016). The Commission requested comments regarding its proposed interpretation, and Commission staff considered those comments in developing the proposed regulatory

change to 1500.17(a)(3), described in this NPR.

II. Statutory Authority, Procedure, and Other Legal Considerations

Under the FHSA, the Commission may classify a ''hazardous substance'' as a ''banned hazardous substance'' if the substance is intended or packaged in a form suitable for household use or is intended to be used by children and the Commission finds that, notwithstanding cautionary labeling required under the FHSA, the degree or nature of the hazard associated with the substance is such that public health and safety can only be adequately served by keeping the substance out of interstate commerce. 15 U.S.C. 1261(q)(1). As part of this authority, the Commission may also create design and performance standards for products that qualify as ''hazardous substances,'' effectively banning products that do not conform to those standards. *Forester* v. *Consumer Product Safety Comm'n,* 559 F.2d 774, 783 (D.C. Cir. 1977).

Fireworks are ''hazardous substances,'' as that term is defined in the FHSA. 15 U.S.C. 1261(f). Therefore, to ban fireworks devices or create design or performance requirements for fireworks devices, the Commission must follow the requirements for rulemaking outlined in the FHSA. Under the FHSA, the Commission must make four substantive findings to ban fireworks devices or create design or performance requirements. The first of these four findings is described in the previous paragraph and involves the adequacy of cautionary labeling to protect the public from the degree or nature of the hazard. This finding need not be included in the regulatory text. There are three additional findings that the Commission must make under the FHSA. These three findings are described in detail in the following paragraphs, and the Commission must include them in the regulations. 15 U.S.C. 1262(i)(2).

First, the Commission must find that when the entities that would be subject to the regulation have adopted a voluntary standard that relates to the risk of injury that the regulation seeks to address, either compliance with the voluntary standard is not likely to adequately reduce that risk, or there is not likely to be substantial compliance with the voluntary standard. 15 U.S.C. 1262(i)(2)(A). For the first prong of this finding, whether compliance with a voluntary standard is likely to adequately reduce a risk of injury depends on whether the risk will be reduced to such an extent that there would no longer be an unreasonable risk of injury. *See* H.R. Rep. No. 208, 97th Cong., 1st Sess. 875 (1981) (discussing the identical provision in the Consumer Product Safety Act (15 U.S.C. 2051–2089)). As for the second prong, several factors are relevant to the Commission's assessment of compliance with a voluntary standard, including the magnitude and speed of compliance, the severity of potential injuries, the frequency of injuries and deaths, and the vulnerability of the population at risk. *See* H.R. Rep. No. 208, 97th Cong., 1st Sess. 875 (1981) (discussing the identical provision in the Consumer Product Safety Act); *see also* 64 FR 71888 (Dec. 22, 1999) (finding that 90% compliance with a voluntary standard for bunk beds was not ''substantial''); 16 CFR part 1213, Appendix.

Second, the Commission must find that the benefits expected from the regulation bear a reasonable relationship to its costs. 15 U.S.C. 1262(i)(2)(B). The benefits of a regulation include the extent to which the regulation would reduce the likelihood and severity of injury that may result from the product. The costs include increases to the price of the product and decreases to the availability or usefulness of the product. H.R. Rep. No. 208, 97th Cong., 1st Sess. 875 (1981) (citing *Southland Mower Co.* v. *Consumer Product Safety Comm'n,* 619 F.2d 499 (5th Cir. 1980)).

Third, the Commission must find that the regulation imposes the least burdensome requirement that adequately reduces the risk of injury that the regulation aims to address. 15 U.S.C. 1262(i)(2)(C). To evaluate this, the Commission must compare the relative compliance costs of alternatives it considered during the rulemaking process. H.R. Rep. No. 208, 97th Cong., 1st Sess. 875 (1981).

These findings are required only for regulatory changes or additions that would ban a hazardous substance. This includes an express ban, as well as a design, performance, or other requirement that has the effect of banning a device that is not already banned. For amendments that merely clarify or ease existing requirements, these findings are not necessary because the rulemaking would not classify a substance or device as banned. *See, e.g.,* 15 U.S.C. 1261(q)(1)(B), 1262(h), 1262(i)(2) (discussing requirements to create a regulation classifying a substance as a ''banned hazardous substance''). Nevertheless, such changes or additions must conform to the Administrative Procedure Act (5 U.S.C. 551–562) requirements for rulemaking, which apply to all of the changes proposed in this NPR. The Administrative Procedure Act requires the Commission to provide interested parties with notice of a proposed rule and an opportunity to comment on it. 5 U.S.C. 553(b), (c).

In addition to the statutory requirements in the FHSA and Administrative Procedure Act that apply to rulemakings, several federal directives are relevant to this NPR. Specifically, a number of Executive Orders (E.O.s) set out rulemaking priorities, including promoting compliance by creating simple and clear regulations and eliminating requirements that are ineffective or outdated. These E.O.s also emphasize the goals of facilitating economic growth, by minimizing burdens, harmonizing with voluntary or international standards, and promoting innovation. *See* E.O. 13609, *Promoting International Regulatory Cooperation,* 77 FR 26413 (May 4, 2012); E.O. 13563, *Improving Regulation and Regulatory Review,* 76 FR 3821 (Jan. 18, 2011); E.O. 12866, *Regulatory Planning and Review,* 58 FR 51735 (Oct. 4, 1993); *see also* E.O. 13579, *Regulation and Independent Regulatory Agencies,* 76 FR 41587 (July 11, 2011). Similarly, the Office of Management and Budget's OMB Circular A–119 (OMB Circular A–119) directs agencies, including independent commissions, to use voluntary consensus standards, rather than develop new standards, whenever appropriate. OMB Circular A–119, *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities* (1998), revised on January 27, 2016. The goal of OMB Circular A–119 is for the federal government to benefit from the expertise and innovation of the private sector, eliminate costs associated with agency development of new standards, reduce the costs of industry compliance, and to support the priorities outlined in E.O.s 13609, 13563, and 12866. As an independent agency, CPSC is not required to comply with E.O.s; however, E.O. 13579 urges independent agencies to pursue the objectives expressed in E.O. 13563, and as a general matter, the Commission strives to support the principles expressed in these E.O.s to construct streamlined and effective regulations. The requirements and revisions proposed in this NPR are intended to align with these directives by clarifying requirements, updating requirements to reflect current technology and products, and harmonizing with a recognized industry standard and other federal requirements.

III. Other Existing Fireworks Standards

There are three international or voluntary standards regarding fireworks:

- *The American Pyrotechnics Association Standard 87–1:* Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics (APA Standard 87–1);
- The American Fireworks Standards Laboratory's voluntary standards for consumer fireworks (AFSL Standard); and
- *The European Standard EN 15947–1 to 15947–5:* Pyrotechnic Articles—Fireworks, Categories 1, 2, and 3 (European Standard).

The American Pyrotechnics Association (APA) is a fireworks trade group made up of various fireworks industry members, including manufacturers, importers, and distributors. According to the group's Web site, its members represent approximately 85 percent of the domestic fireworks industry. APA Standard 87–1, last issued in 2001, provides definitions and requirements for various types of fireworks including consumer fireworks, novelties, theatrical pyrotechnics, and display fireworks.

The American Fireworks Standards Laboratory (AFSL) is an independent, nonprofit corporation that develops voluntary standards for consumer fireworks and serves as a third party laboratory, offering testing and certification for compliance with its standards. According to AFSL's Web site, its members represent 85 to 90 percent of domestic fireworks importers. The AFSL standard, last updated in 2009, includes safety and quality standards for various types of fireworks devices, including design, performance, labeling, and shipping.

The European Standard was developed through the consensus of numerous European national standard bodies, as facilitated by the European Committee for Standardization, and reflects European legislation. This standard includes definitions, fireworks categories, labeling requirements, test methods, and construction and performance requirements.

Additionally, the U.S. Department of Transportation (DOT) has regulations relevant to consumer fireworks. DOT has jurisdiction over the transportation in commerce of hazardous materials, including consumer fireworks. 49 U.S.C. 5101–5128. Under this authority, DOT has specific regulatory requirements for fireworks and incorporates by reference APA Standard 87–1 into its regulations, insofar as it is relevant to transportation safety. 49 CFR 171.7; *see also,* 49 CFR 173.59, 173.64, 173.65.

The APA has continued to review APA Standard 87–1 and is working to issue an updated version of the standard, which DOT subsequently may incorporate by reference into its regulations, supplanting the 2001 version. The Commission is proposing to incorporate by reference portions of APA Standard 87–1 into 16 CFR parts 1500 and 1507, or otherwise align with provisions in that standard. If the APA updates APA Standard 87–1 before the Commission adopts a final rule, the Commission may adopt provisions consistent with or from the 2001 version of the standard, as proposed in this NPR, or may adopt or incorporate by reference provisions of the updated standard that are consistent with the requirements proposed in this NPR.

IV. Proposed Requirements

The Commission proposes several additions and modifications to the fireworks regulations to clarify existing requirements and to improve consumer safety. These proposed requirements fall into three categories—new hazardous substance bans, changes to ease the burdens associated with existing requirements, and clarifications. As discussed, the statutory requirements for these categories differ. To ban a hazardous substance that is not prohibited under the existing regulations, the Commission must make the findings required by the FHSA. To ease or clarify existing requirements, the Commission need not make these findings, but must comply with Administrative Procedure Act rulemaking requirements. The sections below describe the three categories of proposed requirements.

A. New Hazardous Substances Bans

The following proposed requirements would effectively ban hazardous substances that are not currently banned under CPSC's fireworks regulations by adopting mandatory test methods, limiting device content, prohibiting particular chemicals, and adding performance requirements.

1. Adopt a Quantifiable Method of Identifying Devices That Are Limited to Two Grains of Pyrotechnic Composition (16 CFR 1500.17(a)(3))

a. Current Regulatory Requirement and Rationale

Section 1500.17(a)(3) states: ''fireworks devices intended to produce audible effects'' are banned hazardous substances if the audible effect is produced by a charge of more than 2 grains of pyrotechnic composition. There are essentially two parts to this requirement—first, identifying whether a fireworks device is ''intended to produce audible effects,'' and second, if so, measuring the pyrotechnic composition to determine if it exceeds 2 grains.

As the rulemaking that adopted this provision explained, the misuse of devices ''whose audible effect is produced by a charge of more than 2 grains of pyrotechnic composition . . . [had] been the cause of most of the firework deaths and serious injuries'' and the goal of the regulation was to prohibit ''dangerously explosive fireworks.'' 38 FR 4666 (Feb. 20, 1973); 35 FR 7415 (May 13, 1970); *see also,* 34 FR 260 (Jan. 8, 1969). Similarly, the Commission considered the safety need for limiting the pyrotechnic content in certain fireworks devices when it adopted the 50 mg limit for firecrackers in 1977. In the deliberations leading up to that limit, the Commission explained that incident and injury data showed a correlation between the degree of injury and the explosive power of the device involved in the injury. Most cases that resulted in death or severe injuries involved devices with ''large powder accumulations.'' 41 FR 9512, 9517 (Mar. 4, 1976). Thus, the purpose of 1500.17(a)(3) is to address injuries resulting from increased explosive power; the reference to ''audible'' effects was a method of identifying these devices through the type of sound the devices make and not an indication of any safety purpose relating to the loudness of devices or hearing injuries.

This regulatory history and more recent fireworks incident data demonstrate the importance of industry compliance with 1500.17(a)(3) for protecting consumers. As the 2015 Fireworks Annual Report (Fireworks Annual Report; CPSC Directorate for Epidemiology, Division of Hazard Analysis, *Fireworks-Related Deaths and Emergency Department-Treated Injuries During 2015,* June 2016, available at: *http://www.cpsc.gov//Global/Research-and-Statistics/Injury-Statistics/Fuel-Lighters-and-Fireworks/Fireworks_Report_2015FINALCLEARED.pdf*) demonstrates, the injuries that can result from devices that are subject to the 2-grain limit can be severe and can result in death. Overall, nine of the 11 deaths that related to fireworks in 2015, involved devices that are commonly subject to the 2-grain limit; and over the course of 1 month in 2015, an estimated 1,200 injuries (based on a nationwide probability sample) involved devices commonly subject to the 2-grain limit. Of these estimated 1,200 injuries, 100 involved children under the age of 4

years. These incidents included deaths resulting from mortar tubes held by consumers; burns requiring a 1-month hospitalization after a reloadable aerial shell landed in a bystander's lap; and various other injuries affecting all regions of the body.

To identify devices that had a greater explosive power, and therefore, needed a limit to protect consumer safety, the FDA and the Commission opted to apply the 2-grain limit to ''devices intended to produce audible effects.'' At the time the limit was adopted, the focus on ''devices intended to produce audible effects'' was a useful way of identifying devices that had a greater explosive or energetic force. However, the fireworks industry has reported, and Commission testing indicates, that fireworks devices on the market today contain metallic fuel when they are ''intended to produce an audible effect.'' These metallic fuels create an explosive that is more energetic per volume than an explosive without metallic fuel.

b. Current CPSC Test Method and Alternative Test Methods

The regulations do not specify a method for identifying whether a device is ''intended to produce audible effects,'' and therefore, subject to the 2-grain limit. However, the CPSC Consumer Fireworks Testing Manual (CPSC Testing Manual; CPSC Directorate for Laboratory Sciences, Division of Chemistry, *Consumer Fireworks Testing Manual,* 4th ed. (Aug. 17, 2006), available at: *https://www.cpsc.gov/PageFiles/121068/testfireworks.pdf*), specifies how Commission staff identifies these devices during field testing. In accordance with the CPSC Testing Manual, staff listens for a ''loud report'' when the device functions, which indicates it is ''intended to produce an audible effect.'' *See* section (IV)(C)(11)(e) of CPSC Testing Manual, p. 29. This involves staff listening for a sound and assessing whether that sound has the qualities characteristic of an intentional effect. It is not the noise level that is determinative; rather, staff listens for a crisp sharpness that is related to the pressure pulse associated with the ignition of flash powder. If staff hears this ''loud report,'' then they weigh the pyrotechnic material in the break charge (which causes the audible effect) to determine whether it exceeds the 2-grain limit. The CPSC Testing Manual does not carry the force of law; rather, it describes one option for identifying devices that are subject to the 2-grain limit. However, other options may also be valid. The Commission believes that specifying an appropriate identification method in the regulations would provide for transparency and consistency in testing, which facilitates compliance and consumer safety.

To accomplish this, Commission staff has considered the makeup and design of fireworks devices on the market today and reviewed alternative methods of identifying devices that are subject to the 2-grain limit. Based on these assessments, the Commission proposes to set forth, in the regulations, a method for identifying devices that are subject to the 2-grain limit and replace the phrase ''intended to produce audible effects'' to reflect that method.

Fireworks devices have evolved since CPSC adopted 1500.17(a)(3) in 1973, and now use different types of powders, which impact the sounds devices produce. The fireworks industry has moved away from using black powder in break charges, and instead, often uses hybrid powders. In addition, fireworks devices generally are made by hand, resulting in variability in devices from the same manufacturer and lot. Different samples of the same device may not produce the same audible effects. Depending on the shell construction, packing density, and amount of powder, hybrid powders may produce audible effects intentionally or incidentally to disperse visual effects. Significant training and experience are necessary to distinguish between sounds that are an intentional effect of a fireworks device and sounds that are merely a byproduct of other effects or functions of a fireworks device. CPSC staff has substantial training and experience to make this distinction, but the Commission believes that a simpler and more quantitative test would be preferable and would facilitate consistent and accurate industry testing.

To identify a method that reflects the current design of fireworks devices, reduces the variability in judgments of whether a device is ''intended to produce audible effects,'' and is simple and repeatable enough for regulated entities to follow easily and consistently, the Commission has reviewed other existing methods of identifying devices subject to the 2-grain limit. The European Standard does not include any equivalent limit to 1500.17(a)(3), and many of the devices listed in the European Standard are not comparable to those sold in the United States. As such, the European Standard does not offer an alternative method that the Commission could adopt. The AFSL Standard limits the explosive composition of various devices ''intended to produce reports'' to 2 grains of pyrotechnic composition (''reports'' is a synonym for ''audible effects''). The AFSL Standard also limits break charges to containing only black powder, an equivalent nonmetallic fuel, or fuel that is empirically demonstrated to perform similarly to black powder. Thus, while the AFSL Standard provides similar limits to APA Standard 87–1, described below, it is less quantifiably precise because it provides flexibility for empirical analysis to permit various fuel types.

APA Standard 87–1, section 2.5, provides the same 2-grain (130 mg) limit as 1500.17(a)(3) on the pyrotechnic content of fireworks devices ''intended to produce audible effects,'' but also includes a definition, or method of identifying whether a device is ''intended to produce audible effects.'' If a fireworks device includes a burst charge that contains a metallic powder less than 100 mesh in particle size, then the device is ''intended to produce audible effects.'' Section 2.5 elaborates, stating the inverse of this test method and providing examples. This is a straightforward and objectively measurable method of determining whether a device is subject to the 2-grain limit; under this method, testers need only examine and measure the contents of the burst charge. This definition is consistent with 1500.17(a)(3), which lists devices that traditionally include metallic fuel as examples of devices ''intended to produce audible effects,'' such as devices that generally use flash powder, which is a mixture of an oxidizer (typically potassium perchlorate) and a metallic fuel (typically aluminum). This method is also consistent with the intended purpose of the regulation to protect consumers from the greater energetic power of certain devices and the associated safety risks.

Commission staff has conducted preliminary testing to examine the relationship between metallic content in break charges and the energy or explosive power of the fireworks device. As an example, staff examined the effect of adding aluminum, a metallic powder, to fireworks devices. As the Division of Chemistry (Chemistry) memorandum in the briefing package for this NPR explains, a quadratic analysis reveals that a 1 percent addition of aluminum increases the energy of a device by 3 percent, and that as aluminum content increases, the amount of explosive power increases, up to 25 percent aluminum content, at which point the explosive power begins to diminish. This demonstrates the consistency between limiting metallic content in break charges and the intended safety purpose of 1500.17(a)(3)—namely, to

limit the explosive power of devices, in order to reduce injuries associated with more explosive devices. Additionally, adding aluminum or other metallic content to an energetic material may increase sensitivity to impact, spark, and friction, which may present additional safety hazards.

c. Proposed Regulatory Requirement

Accordingly, the Commission proposes to adopt a method for identifying devices that are subject to the 2-grain limit that is consistent with the method in APA Standard 87–1. However, unlike APA Standard 87–1, the Commission proposes to state the criteria directly in the regulation, without referencing ''devices intended to produce audible effects''; in addition, the Commission proposes to state only the general criteria for identifying these devices (*i.e.,* metallic fuel greater than 100 mesh in particle size), without the additional details in APA Standard 87–1. Although at the time it was adopted, the phrase ''intended to produce audible effects'' was a useful way to identify devices with greater explosive power and a correspondingly greater risk of injury, because of the current design and composition of fireworks devices, it is clearer and more direct to refer simply to their content.

To assess the CPSC Testing Manual method and the APA Standard 87–1 method, Commission staff randomly tested fireworks samples collected from the Office of Compliance from fiscal years 2014, 2015, and 2016. Using the CPSC Testing Manual method, staff found that 17 percent of the samples were ''intended to produce audible effects'' and exceeded the 2-grain limit. In contrast, while using the APA Standard 87–1 method, staff found that 84 percent of the samples were ''intended to produce audible effects'' and exceeded the 2-grain limit. Although the sample size is too small to be conclusive, these results show a notable difference between the number of devices that qualify as ''intended to produce audible effects'' using the CPSC Testing Manual method and the APA Standard 87–1 method. This may be because the APA Standard 87–1 method relies on precise and quantifiable measurements, rather than experienced observation, leaving less room for interpretation.

The Commission does not propose to modify the overall requirement in 1500.17(a)(3); rather the Commission proposes to specify the composition that identifies a device as subject to the 2-grain limit and otherwise retain the 2-grain limit. For consistency, the Commission also proposes to replace references to ''audible effects'' throughout the regulations. Because the regulations currently do not require any particular method of identifying which devices are subject to the 2-grain limit, requiring the use of a specific method creates a new requirement. Additionally, consistent with the comparative test data, the proposed method likely would identify more devices as subject to the 2-grain limit than the current CPSC Testing Manual method. Therefore, the practical effect of adopting the proposed method of identifying whether a device is ''intended to produce audible effects'' is that the Commission would ban more devices than it currently considers banned.

It is important to note that the proposed revision to 1500.17(a)(3), which focuses on the metallic content of the device, would reduce the scope of fireworks devices that are subject to the 2-grain limit because the proposed revision does not limit the content of devices containing black powder only. However, the Commission believes that reducing the scope will not decrease the level of protection that the regulation provides because the Commission is not aware of any devices on the market that fall within the scope of the current regulation, but outside the scope of the proposed regulation. Under the current method CPSC staff uses, devices that produce a ''loud report'' are limited to 2 grains of pyrotechnic composition; this limit applies whether the device contains metallic fuel or only black powder. Under the proposed regulation, only devices that contain metallic fuel less than 100 mesh in particle size are limited to 2 grains of pyrotechnic composition. Therefore, the proposed provision does not limit the content of devices that contain only black powder. However, Commission staff's extensive experience observing and testing fireworks devices indicates that there are no devices currently on the market that contain only black powder and produce a ''loud report,'' subjecting them to the 2-grain limit. Consequently, like the proposed regulation, the current method, in effect, does not limit the pyrotechnic composition of devices that contain only black powder. Nevertheless, to address this difference, and because a device containing large amounts of only black powder could potentially pose a safety hazard to consumers, the Commission is proposing limits to the pyrotechnic weight in various aerial and ground devices. These limits are discussed in Section IV.A.2., below.

In addition, the Commission is considering limiting metallic powders with larger particle sizes in break charges or reports, possibly by limiting the permissible size and/or the permissible percentage of such metal powders.

d. FHSA Findings

i. Finding 1: Public Health and Safety

In previous rulemakings supporting the 2-grain limit in 1500.17(a)(3), the Commission has found that the degree and nature of the hazard associated with the devices subject to that limit are such that public health and safety necessitate the Commission banning devices that exceed that limit. The proposed method of identifying these devices supports and furthers that necessary ban by providing a quantifiable and reliable method of identifying these particularly explosive devices. As the Fireworks Annual Report indicates, serious injuries and deaths still occur that are associated with devices commonly subject to this limit, including injuries to young children. In addition, as staff's testing indicates, the current test method identifies fewer devices as being subject to the 2-grain limit than the APA Standard 87–1 method. Therefore, the Commission believes that the proposed method is necessary to protect consumer safety because a more straightforward, quantifiable, and repeatable test method that does not require extensive training and experience will more-consistently identify devices that need to be limited to 2 grains of pyrotechnic composition. Consequently, this method will be more effective in keeping such devices off the market.

ii. Finding 2: Voluntary Standards

The Commission evaluated compliance with the 2-grain limit provision in APA Standard 87–1. The Commission believes that the test method is effective since it is a consistent and reliable method for identifying more explosive devices, such that the Commission is proposing to adopt the same method. However, the Commission does not believe that there is likely to be substantial compliance with that provision of APA Standard 87–1. The Commission's preliminary testing of samples collected from the Office of Compliance revealed that 84 percent (54 of 64) of devices analyzed using the APA Standard 87–1 method met that standard's definition of devices ''intended to produce audible effects'' and exceeded the 2-grain limit, in violation of the standard. Moreover, the severity of the potential injuries shown in CPSC's incident data (including severe burns and death) and the

vulnerability of the population at risk (including young children, as indicated in the Fireworks Annual Report) indicate the need for a high level of compliance. As discussed above, these factors are relevant to assessing whether there is likely to be ''substantial compliance'' with a voluntary standard. Therefore, the Commission believes that there is not likely to be substantial compliance with the voluntary standard, so a regulatory requirement is necessary.

iii. Finding 3: Costs and Benefits

The Commission believes that the benefits of the proposed requirement bear a reasonable relationship to its costs. The benefits include reducing the likelihood and severity of injury by providing a simpler and more consistent means of identifying devices that have comparatively high explosive powers. As the Directorate for Economic Analysis (EC) memorandum in the briefing package for this NPR indicates, the costs of this requirement are likely to be low. Based on CPSC testing of fireworks samples, there may be a low level of compliance with the comparable provision in APA Standard 87–1; however, the costs associated with changes that would bring noncompliant devices into compliance are likely to be low. Any entities that do not already comply with the provision in APA Standard 87–1 would need to replace metallic powders with nonmetallic powder, or reduce the amount of metallic powders in their devices. Because manufacturers already use both types of powders in devices, and the costs of the two types are comparable, the costs are likely to be low.

iv. Finding 4: Alternatives

The Commission believes that the proposed requirement is the least burdensome option that meets the safety goal of this provision. The Commission examined several test methods, including the method in the CPSC Testing Manual, a method based on explosive force, APA Standard 87–1, the AFSL Standard, and the European Standard. The method in the CPSC Testing Manual requires highly experienced and trained testers to distinguish devices by listening to them; this requires highly-specialized testers, and as the testing data suggests, this leads to comparatively fewer devices being identified as subject to the 2-grain limit. The AFSL Standard is more stringent than APA Standard 87–1, limiting break charges to black powder; but it is also less precise, allowing for equivalent nonmetallic fuel or fuel that is empirically shown to be like black powder. This less-defined standard creates a burden for testing various powders or strictly limits devices to black powder. The European Standard limits pyrotechnic composition differently for various devices, but these devices do not all correlate with devices available on the U.S. market. Consequently, the method the Commission proposes in this NPR is the least burdensome alternative because it provides a simple, precise, and quantifiable method of identifying devices that are subject to the 2-grain limit, minimizing the training needed, and eliminating the need to test the characteristics of various powders.

e. Enforcement Discretion for Minimal Contamination

The proposed requirement would ban devices that contain any amount of metallic powder less than 100 mesh in particle size in the burst charge, when the burst charge is produced by more than 2 grains of pyrotechnic content. However, the Commission recognizes that it may be difficult to ensure that there is no such metallic powder present due to potential contamination from visual effects or environmental contamination, and it may be difficult to consistently identify the presence of metallic powder because of detection limitations and variation. Consequently, the Commission will allow for minimal contamination of up to, but not exceeding, 1.00 percent of metallic powder in burst charges that are subject to 1500.17(a)(3).

The Commission believes that the presence of a metal, such as aluminum, in trace amounts would not pose an increased safety risk to consumers because a scarce amount of contaminant would not significantly add to the energy of the explosive. As the Chemistry memorandum in the briefing package for this NPR explains, staff's preliminary testing revealed that metallic content used in visual effects may inadvertently contaminate break charge content at very low levels. Staff found that when contamination occurred, the contamination level in the break charge was generally less than 1 percent. In addition, different detection instruments can vary in the particle sizes and metallic content levels they detect. Staff evaluated the detection levels of Inductively Coupled Plasma-Optical Emission Spectroscopy (ICP–OES) and X-Ray Fluorescence (XRF) and found that they produced largely similar results but can identify metallic content at slightly different levels. Commission staff believes that both ICP–OES and XRF are viable instruments for assessing compliance with proposed 1500.17(a)(3).

To account for these variables, the Commission will exercise enforcement discretion to allow up to, but not exceeding, 1.00 percent contamination of metallic powder in a burst charge. The Commission believes that 1.00 percent is an appropriate level for two reasons. First, 1.00 percent would allow for unintentional contamination at the levels Commission staff has seen are common in fireworks devices. As the Chemistry memorandum explains, staff's preliminary testing reveals that when metallic content present in visual effects inadvertently contaminates a break charge, it is generally at levels below 0.4 percent; a 1.00 percent allowance should adequately allow for inadvertent contamination. Second, the increase in explosive force from 1.00 percent metallic fuel contamination is minimal, and the Commission believes that it does not present a notable increase in the safety risk to the public. As staff's preliminary testing indicates, a 1.00 percent increase in metallic content increases the energy of a device by 3 percent (using aluminum as an example), and further increases in metallic content correspondingly increase the explosive power of the device up to 25 percent, at which point the explosive power begins to diminish. Thus, contamination up to 1.00 percent likely does not notably increase the risk to consumers.

2. Limit Chemical Composition and Pyrotechnic Weight (16 CFR 1500.17(a))

a. Rationale for Limiting Chemical Composition and Pyrotechnic Weight and Relevant Provisions in Voluntary Standards

As discussed, the amount of pyrotechnic material in a fireworks device directly relates to the energetic power of the device, and greater energetic power presents increased safety risks to consumers. To mitigate this risk, 1500.17(a)(3) limits the pyrotechnic material in fireworks devices that are ''intended to produce audible effects.'' However, this risk also exists for devices that do not fall within that category. To address this, each of the voluntary and international standards on fireworks also limits the chemical composition and pyrotechnic weight of various devices. The specific limits vary with the type of device. For certain devices, the pyrotechnic weight limits address the proportion of break charge relative to the chemical composition or effects. This protects the public because a large proportion of break charge relative to effects may

disperse the effects further and injure bystanders or ignite nearby property.

Currently, CPSC's fireworks regulations do not include such limits, except for certain devices, such as party poppers and firecrackers. The Commission proposes to adopt such limits to reduce the safety risks associated with higher levels of particular chemical compositions and ratios of pyrotechnic weight in specific devices.

Each of the voluntary and international standards limits different devices (some of which overlap), and some of the limits differ. These limits are in section 3.1.1 and 3.1.3 (ground devices) and 3.1.2 (aerial devices) of APA Standard 87–1; in sections 2–1.8, 2–2, 2–3, and 2–4 of the AFSL Standard; and in Table 1 in part 5 of the European Standard. The APA Standard 87–1 limits specify a maximum chemical composition for components, lift charges, and devices, and a maximum ratio of burst charge to total weight of chemical composition. The AFSL Standard does the same, but with some different limits and with allowances for alternate lesser ratios and different device designs. The European Standard lists 30 different devices with corresponding net explosive content limits. However, the devices listed in the European Standard do not fully correspond with devices available in the U.S. market.

b. Proposed Regulatory Requirements

The Commission proposes to incorporate by reference the limits in APA Standard 87–1 for mine and shell devices, aerial shell kits (reloadable tube), cylindrical fountains, cone fountains, illuminating torches, wheels, and chasers, with one modification. The categories of devices listed in APA Standard 87–1 are similar to the device delineations in the regulations with which regulated entities are already familiar. They also largely comply with APA Standard 87–1 for transportation purposes, and the Commission believes these limits provide for consumer safety by limiting the explosive power of devices.

The Commission proposes to modify the provisions in APA Standard 87–1, which it proposes to incorporate by reference into the regulation, by including an additional provision that limits the explosive force of certain aerial devices. For mine and shell devices and aerial shell kits (reloadable tube), the Commission proposes to specify, in addition to the provisions in APA Standard 87–1, that the lift charge of each shell is limited to black powder (potassium nitrate, sulfur, and charcoal) or similar pyrotechnic composition without metallic fuel. This aligns with the safety rationale regarding metallic fuel discussed above—namely, that metallic fuels can make an explosive more energetic per volume than devices that do not contain metallic powder; so limiting the lift charge of certain aerial devices to contain only black powder (*i.e.,* nonmetallic fuel), would limit the explosive power of those devices.

Although the provisions that the Commission proposes align with APA Standard 87–1's limits on chemical composition and pyrotechnic weights for aerial and ground devices, they differ from the voluntary standard in three ways. First, the Commission's proposed requirement does not include details about specific devices (*e.g.,* descriptions) that it believes are unnecessary for these limits. Second, the Commission's proposed requirement includes additional information that clarifies the scope of the limits. The Commission believes that these differences are necessary to establish a clear requirement. Third, the Commission proposes to adopt limits for only some ground devices, excluding some of the ground devices listed in APA Standard 87–1, including ground spinners, flitter sparklers, toy smoke devices, and sparklers. The Commission is omitting these devices because, based on incident and injury data, the Commission does not believe these devices pose significant safety hazards to consumers to necessitate limits on their compositions.

As discussed, the proposed revision to 1500.17(a)(3), which focuses on the metallic content of devices, would reduce the scope of fireworks devices that are subject to the 2-grain limit. Specifically, under the current regulation and CPSC staff's current test method, the 2-grain limit applies to any device that produces a ''loud report,'' whether it contains metallic fuel or only black powder; under the proposed requirement, the 2-grain limit would apply only to devices that contain metallic fuel and not devices that contain only black powder. The proposed pyrotechnic weight limits for aerial devices fills the gap created by this change, by limiting the explosive force of devices regardless of whether they contain metallic fuel or only black powder. To provide comparable limits for ground devices, the Commission also proposes to adopt the pyrotechnic weight limits for ground devices that are in APA Standard 87–1. Limits for ground devices will also compensate for the reduced scope that the proposed 1500.17(a)(3) creates, by preventing ground devices from containing large amounts of black powder. The Commission believes that these limits are necessary to protect the public because devices containing a large amount of black powder can pose a safety hazard; therefore, it is necessary to limit the power of devices that contain only black powder, as well as devices containing metallic powder.

The proposed limits on chemical composition and pyrotechnic weight would create new limits on fireworks devices that do not currently exist in the regulations, thereby creating a new ban of hazardous substances that currently are not prohibited.

c. FHSA Findings

i. Finding 1: Public Health and Safety

Fireworks devices with greater explosive content may contribute to more severe injuries and deaths than devices with less explosive power and labeling required by section 2(p)(1) of the FHSA is not adequate to protect the public health and safety. *See* 15 U.S.C. 1261(p)(1). Therefore, for the same reasons supporting the 2-grain limit in 1500.17(a)(3), the Commission believes that chemical composition and pyrotechnic weight, including content ratios, need to be limited in devices that are not subject to 1500.17(a)(3) to protect the public from the safety risks of devices with high explosive content and those containing only black powder.

ii. Finding 2: Voluntary Standards

With respect to the first prong of this finding, the Commission believes that compliance with the voluntary standard is likely to reduce the risk of injury, because the limits in the voluntary standard effectively reduce the explosive power of devices, which is why the Commission proposes to incorporate by reference the limits in the voluntary standard. As for the second prong of the finding, however, the Commission believes that there is not likely to be substantial compliance with the voluntary standard. Commission staff randomly tested fiscal year 2014 and 2015 fireworks samples collected by the Office of Compliance to evaluate compliance with the various limits in APA Standard 87–1. Staff analyzed 42 devices in total (12 reloadable aerial shell devices and 30 multiple-tube mine and shell devices). Although the sample size of this testing is insufficient to draw definitive conclusions, the results, nevertheless, are informative. Two (17%) of the 12 reloadable aerial shell devices and 8 (27%) of the 30 multiple-tube mine and shell devices staff tested exceeded the

permissible break charge-to-effect ratio specified in APA Standard 87–1. None of either type of device exceeded the maximum lift charge provided in APA Standard 87–1. Additionally, none of the reloadable aerial shell devices exceeded the total pyrotechnic composition limits in APA Standard 87–1, while 6 (20%) of the multiple-tube mine and shell devices exceeded those limits. The Commission does not have information regarding industry compliance with the limits on ground devices set forth in APA Standard 87–1, and requests such information and relevant data.

As the preliminary testing staff conducted showed, between 15 percent and 30 percent of tested devices did not comply with some portion of APA Standard 87–1's limits on chemical composition and pyrotechnic weight. Moreover, the potential severity of injuries and death associated with devices with greater explosive power, described in the previous section, indicate the need for particularly high compliance levels.

iii. Finding 3: Costs and Benefits

The Commission believes that the benefits and costs of the proposed requirement bear a reasonable relationship because the minimal costs associated with limiting the content of fireworks devices are reasonable in light of the benefits to consumer safety. Benefits include reducing the presence of more-energetic devices on the market, which pose an increased safety risk to consumers. Anticipated costs include implementing quality control measures to ensure devices do not contain more than the proscribed limits; these quality control measures may include acquiring smaller measuring devices, which is likely low in cost. The proposed requirements are not expected to eliminate any products from the market because devices that are noncompliant could function as well if they complied with the proposed limits, and the Commission does not expect that manufacturers will have to redesign their products.

iv. Finding 4: Alternatives

Given the minimal burden this requirement would create, the Commission believes that the proposed limits on chemical composition and pyrotechnic weight are the least burdensome way to achieve the safety purpose of the proposed requirement. In comparison to the AFSL and European Standards, the categories of devices listed in APA Standard 87–1 are similar to the device delineations in the regulations with which regulated entities are already familiar. They also largely comply with APA Standard 87–1 for transportation purposes because DOT incorporates that standard by reference into its regulations. The only substantial difference between APA Standard 87–1 and the proposed requirement is that the proposed requirement does not include all of the ground devices that APA Standard 87–1 lists. This is because the Commission does not have data indicating that those ground devices pose significant safety hazards to consumers. As such, the Commission does not believe that limits for those devices are necessary, and there would not be adequate support to justify the FHSA findings.

3. Add Hexachlorobenzene and Lead Tetroxide and Other Lead Compounds to the List of Prohibited Chemicals (16 CFR 1507.2)

a. Proposed Requirements and Rationale

The Commission proposes to add hexachlorobenzene (HCB) and lead tetroxide and other lead compounds to the list of prohibited chemicals in 1507.2. Various studies indicate that fireworks devices contain HCB and lead tetroxide or other lead compounds. Specifically, studies have found HCB in 25 percent to 53 percent of fireworks samples, depending on the study and in concentrations up to 4.4 percent. *See* Fireworks NPR Briefing Package, Health Sciences Memorandum (Tab A of NPR Briefing Package), for further discussion of these studies. Testing by AFSL and CPSC has found lead compounds in 9 percent to 38 percent of fireworks samples, depending on the study, and in concentrations greater than 0.25 percent.

HCB and lead tetroxide and other lead compounds can be released into the environment when fireworks containing them explode; and although the Commission has not conducted an exposure analysis, the public can absorb both chemicals into their bodies through inhalation or surface contact. Moreover, both of these chemicals are likely carcinogenic and are toxic to humans. HCB is associated with numerous serious health effects, including developmental and reproductive toxicity, liver toxicity, and cancer, and can be passed to offspring. Absorption of lead compounds also can have serious impacts on neurological, reproductive, renal, cardiovascular, gastrointestinal, and hematological functions, particularly in children, and can be passed to offspring. The Commission proposes to prohibit fireworks devices from containing these chemicals. This proposed provision covers only health effects relating to non-carcinogenic liver effects and developmental effects including anatomical variations or delayed development (but not including malformations) associated with HCB and hematological, gastrointestinal, cardiovascular, renal, and neurological toxicity associated with lead tetroxide and other lead compounds.

The FHSA authorizes the Commission to declare a substance or mixture of substances to be a hazardous substance within the scope of the FHSA, if it finds that the substance meets one of the categories described in section 2(f)(1)(A) of the statute. 15 U.S.C. 1262(a)(1). Section 2(f)(1)(A) of the FHSA lists various characteristics that qualify a substance as a ''hazardous substance.'' *Id.* at 1261(f)(1)(A). One of these characteristics is that the substance is ''toxic,'' which the FHSA defines as a substance ''which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.'' *Id.* at 1261(f)(1)(A), 1261(g). In addition to meeting the definition of ''toxic,'' the Commission must also determine that the substance ''may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use'' in order to be a ''hazardous substance'' under the FHSA. *Id.* at 1261(f)(1).

As described in the Health Sciences memorandum in Tab A of the briefing package for this NPR, Commission staff believes that fireworks devices containing HCB or lead tetroxide or other lead compounds present toxicological hazards that can be absorbed into the human body; these substances have been demonstrated to be harmful to human health; and fireworks devices have been found to contain these chemicals. Therefore, the Commission believes that there is support to find that fireworks devices containing HCB or lead tetroxide or other lead compounds are ''toxic'' within the definition in the FHSA and may cause substantial illness as a result of reasonably foreseeable handling, use, or contact with such devices.

All three voluntary and international standards regarding fireworks include some prohibition of lead compounds, HCB, or both. Although the three standards are similar, each addresses limits on HCB and lead compounds differently. Table 1 outlines the relevant requirements in each of the three standards, as well as the current CPSC regulations.

TABLE 1—LIMITS ON HCB AND LEAD COMPOUNDS IN FIREWORKS DEVICES

	HCB	Lead compounds
Current § 1507.2	Not listed	No limit.
APA Standard 87–1 [1]	Not listed	Prohibited at concentrations of 0.25% by weight or more.
AFSL Standard [2]	Prohibited at concentrations above 0.01% by weight	Prohibited.
European Standard [3]	Prohibited	Prohibited.

[1] Section 3.7.
[2] Appendix A, Table I, para. (e), (f).
[3] EN 15947–5, pt 1.

As discussed in Section IV.B.1., below, the Commission also proposes to allow for trace contamination with these and other prohibited chemicals, consistent with the voluntary standards. Section IV.B.1. discusses the various trace contamination limits the Commission is considering for these chemicals and other prohibited chemicals in further detail. Nevertheless, the Commission believes that there is a need, generally, to prohibit HCB and lead tetroxide and other lead compounds.

The proposed requirement would constitute a new hazardous substance ban under the FHSA because it would ban chemicals that are not currently prohibited in CPSC's fireworks regulations.

b. FHSA Findings

i. Finding 1: Public Health and Safety

The Commission believes that HCB and lead tetroxide and other lead compounds in fireworks present a serious hazard to consumers, justifying prohibiting these chemicals. As the Health Sciences memorandum in the briefing package for this NPR discusses, testing indicates that HCB and lead are present in some fireworks devices and bystanders can absorb these chemicals from the environment when they are released from fireworks. Moreover, both chemicals are associated with severe health problems.

ii. Finding 2: Voluntary Standards

As for the first prong of this finding, the Commission believes that compliance with the voluntary standard would adequately reduce the risk of injury because the voluntary standard limits the explosive power of devices, which is why the Commission proposes to incorporate these limits by reference into the regulations. With respect to the second prong of this finding, the Commission believes that there is not likely to be substantial compliance with the voluntary standards. As the data shows, studies have found devices containing HCB or lead compounds and at levels above the limits permitted in the voluntary standards, indicating a lack of compliance. Because of the serious health effects associated with HCB and lead compounds, these two chemicals pose a particularly serious risk to consumers, necessitating a particularly high level of compliance.

iii. Finding 3: Costs and Benefits

The Commission believes that the benefits of the recommended requirement bear a reasonable relationship to its costs. The benefits would include reducing consumer exposure to two chemicals that pose serious health effects. Comparatively, the costs are likely low because HCB and lead compounds are not necessary components of fireworks, they are not commonly used, and the effects they create can be replicated with other safer and less-costly materials.

iv. Finding 4: Alternatives

The Commission believes that the recommended requirement is the least burdensome means of achieving the safety purpose. Prohibiting these two chemicals in unsafe levels is necessary to protect consumer safety; any alternative may not accomplish this purpose.

4. Adopt a Test Method To Evaluate Side Ignition (16 CFR 1507.3)

a. Proposed Requirement and Rationale

Section 1507.3(a)(1) requires fireworks devices that use a fuse (with the exception of certain smaller fireworks devices) to use a fuse that is treated or coated to ''reduce the possibility of side ignition.'' Section 1500.17(a)(9) bans any fireworks device that does not comply with applicable requirements of part 1507 (except as specified in 1500.17(a)(9)), thereby making devices that do not meet the fuse requirements in 1507.3 ''banned hazardous substances.'' The regulation does not detail how to evaluate compliance with 1507.3(a)(1), nor does it specify what qualifies as ''reduc[ing] the possibility of side ignition.'' The CPSC Testing Manual, APA Standard 87–1, and the AFSL Standard provide additional details about this requirement. The CPSC Testing Manual provides a test for evaluating fuse side-ignition resistance. The testing involves holding a lit cigarette against the side of the fuse and measuring how long the fuse resists ignition. The CPSC Testing Manual directs testers to measure whether side ignition occurs within 5 seconds; and CPSC currently considers a device to have failed the fuse side-ignition resistance requirement in 1507.3(a)(1) if the fuse ignites within 3 seconds. APA Standard 87–1 and the AFSL Standard provide similar restrictions to 1507.3(a)(1) and similar test methods to the CPSC Testing Manual, each requiring the fuse not to ignite within 3 seconds.

Between 2005 and 2015, the Commission found 28 violations of 1507.3(a)(1). In addition, Commission staff assessed 211 fireworks device samples for side ignition in fiscal year 2015. Staff found that 1 sample (0.5%) ignited in less than 3 seconds; 12 samples (5.7%) ignited in 3 to 5 seconds; and 198 (93.8%) did not ignite within 5 seconds.

The potential for injury when a fireworks device inadvertently ignites is serious and could severely injure or kill a person attempting to light the fireworks device or harm bystanders. If a device lights quickly without the user deliberately lighting it, the user could be holding the device or be close to it when it explodes. Although incident and injury reports listed in the Fireworks Annual Report do not specifically reference side ignition of fireworks devices (which may be difficult to identify), the report does include numerous incidents in which users or bystanders died or sustained serious injuries when a fireworks device exploded while the user was holding it or when the device was lit too close to bystanders or to other fireworks or explosives. Injuries resulting from these incidents included severe burns, bone fractures, and lacerations.

Because of the potential severity of injuries that can result if a device inadvertently ignites, the Commission proposes to adopt the test method for evaluating fuse side ignition described in the CPSC Testing Manual as part of

the regulations and to specify that fuses must resist side ignition for at least 3 seconds. Because this test method is part of the CPSC Testing Manual, it is not a requirement, but rather, is simply one method available for assessing compliance with 1507.3(a)(1). A clear and consistent understanding of the side ignition resistance requirement may improve safety because industry members would evaluate the side ignition resistance of fuses uniformly, allowing them to consistently and reliably identify fuses that risk side ignition, thereby posing a safety risk to consumers. Moreover, specifying that devices must resist side ignition for 3 seconds provides a clear threshold for determining the safety of the device.

As explained, the proposed requirement, in effect, would create a new hazardous substance ban, triggering the findings required under the FHSA because it would require all manufacturers to test their devices and use that evaluation method, which may be different or more stringent than the method they currently use.

b. FHSA Findings

i. Finding 1: Public Health and Safety

The Commission believes that the degree and nature of the hazards associated with side ignition are such that the public health and safety necessitate banning devices that exceed the proposed side ignition resistance limit. Inadvertent side ignition presents a serious safety hazard to consumers who may be near the device when it functions. Although incident data does not specifically capture side-ignition incidents, the Fireworks Annual Report references deaths and serious injuries that resulted when a fireworks device fired too close to a user or bystander or when a user was holding it, which are among the circumstances likely to occur when a device inadvertently lights by side ignition. A quantifiable test for all regulated entities to follow would improve consumer safety by promoting consistent assessment of devices to screen for unsafe devices entering the market.

ii. Finding 2: Voluntary Standards

In considering the first prong of this finding, the Commission believes that compliance with the voluntary standard would likely adequately reduce the risk of injury because it specifies a test for evaluating side ignition and specifies a reasonable time in which fuses should resist side ignition, which is why the Commission proposes to adopt a comparable test method and limit. But with respect to the second prong of this finding, the Commission believes that there is not likely to be substantial compliance with the APA Standard 87–1 test method and 3-second threshold. Although CPSC's preliminary testing indicates that a high percentage of devices satisfy the APA Standard 87–1 fuse side-ignition resistance provisions, given the severity of the potential injuries that can result when a fireworks devices inadvertently lights, the Commission believes that a particularly high level of compliance is necessary to adequately reduce this risk. As discussed above, the severity of potential injuries is a factor the Commission considers relevant in assessing the level of compliance necessary to constitute ''substantial compliance'' with a voluntary standard. *See* H.R. Rep. No. 208, 97th Cong., 1st Sess. 875 (1981). Moreover, the test method that the Commission proposes includes additional details that APA Standard 87–1 does not, making the proposed test method clearer, which facilitates compliance and uniformity of testing and results.

iii. Finding 3: Costs and Benefits

Third, the Commission believes that the benefits of the proposed requirement bear a reasonable relationship to its costs. Anticipated costs include developing a testing program to evaluate product compliance in order to issue certificates of compliance, modifying devices to resist side ignition for a longer period, and potentially removing a small proportion of devices from the market. The Commission does not expect the costs associated with these options to be high, particularly because testing costs can be allocated across all devices with fuses. Benefits include the reduced risk of injury to consumers, including a reduced risk of serious injuries associated with devices firing close to users.

iv. Finding 4: Alternatives

Fourth, the Commission believes that the proposed requirement is the least burdensome way to achieve the targeted safety purpose. The proposed test method and 3-second threshold are consistent with the voluntary standards and the CPSC Testing Manual and would facilitate compliance and consumer safety.

5. Require Bases To Remain Attached to Devices (16 CFR 1507.4)

a. Proposed Requirement and Rationale

Section 1507.4 provides a minimum base-to-height ratio for fireworks devices that aims to reduce the likelihood of devices tipping over. The ratio test is intended to prevent devices from tipping over, but it is a static test that does not evaluate whether a device will tip over when firing. When firing, a device may tip over if there is no base, or if the base is not securely attached. If a device tips over when firing, it presents a serious safety hazard because it could fire in the direction of bystanders or nearby property, or users may return to a lit device to correct the tip over. Although the Fireworks Annual Report does not specifically track incidents or injuries that involve detached bases, the report does indicate that during a 1-month period in 2015, 6 percent of incidents involved devices tipping over, and 13 percent of incidents involved errant flight paths (including devices firing at bystanders rather than directly upwards), which resulted in severe burns. Although these incidents are not attributable to base detachments, specifically, incidents involving devices tipping over or having errant flight paths are the types of incidents that can occur when a base detaches from a device.

Commission staff has observed that several devices on the market do not have bases, or they have bases that became detached before or during use. Although staff does not systematically check for base attachment issues because that currently is not a requirement, staff nevertheless, may record these issues in notes on test reports during routine testing. Because staff does not systematically check and record base attachment issues, the reports that do reflect such issues represent the minimum number of base attachment issues that staff has witnessed. Between fiscal year 1999 and 2016, staff reports indicate that 88 devices had no base, or the base detached before or during operation; 32 devices tipped over during testing; and 76 devices had compromised tube integrity. More than half of the base separations that staff observed were between fiscal years 2010 and 2016. This could suggest a decline in quality control, although there are other possible explanations as well. In some of these cases, staff noted that the base was detached or broken when received; in others, the base detached during handling; and in others, the base detached or cracked when the device fired. Staff has identified 111 samples (2.4%) out of 4,554 devices that have, or could have bases and that contained notes indicating that bases were either missing or functioned improperly during operation. This indicates that there are a large number of devices on the market that potentially pose a safety hazard if a device tips over.

Because of the safety risk associated with devices tipping over, the role base attachment can play in tip-over incidents, staff's observations of devices that rely on bases to operate properly, and staff's observation of devices on the market that do not have bases that are attached securely, the Commission proposes to require bases to remain attached to devices during storage, handling, and normal operation.

This proposed requirement is similar to provisions in the AFSL Standard and APA Standard 87–1 that require bases to remain attached to devices during transportation, handling, and normal operation. However, because Commission staff has observed devices that arrive with no base or a detached or broken base, the Commission proposes to extend this requirement to storage as well. Because DOT has jurisdiction over transportation safety, the Commission's proposed provision does not address transportation.

This proposal would create a new hazardous substance ban because it would add a requirement to 1507.4 that would require bases to remain attached during storage, handling, and normal operation. As noted, any fireworks device that does not comply with part 1507 constitutes a banned hazardous substance under 1500.17(a)(9).

b. FHSA Findings

i. Finding 1: Public Health and Safety

The Commission believes that the degree and nature of the hazard associated with bases detaching and devices tipping over when firing are such that the public health and safety necessitates the Commission banning devices that do not have bases that are attached securely. Commission testing has found numerous devices that do not have bases that are attached securely and have tipped over during firing. Moreover, the proportion of these devices has increased in recent years. If a device tips over when firing, it can result in serious injuries. Although the incident reports do not address base detachments specifically, tip overs and other incidents can result when a base detaches and have resulted in serious burns to users and bystanders.

ii. Finding 2: Voluntary Standards

The Commission also believes that the voluntary standard provisions regarding base detachment are not adequate. For one, the voluntary standards include requirements relevant to transportation, which falls within DOT's purview. In addition, the Commission believes that the voluntary standards are not likely to adequately reduce the safety risk associated with base detachments because they do not address detachment that occurs during storage. Commission staff has observed fireworks devices with bases that were missing, broken, or detached before staff handled and operated them. As such, staff concluded that it is necessary to require attachment during storage. Finally, the Commission believes that there is not substantial compliance with the voluntary standards. In recent years, Commission staff has observed devices with missing, broken, or detached bases. This suggests that there is not substantial compliance with the voluntary standards. The presence of devices on the market that do not comply with the voluntary standards and the serious injuries that can result when such noncompliant devices tip over during firing, support the Commission's finding that there is not sufficient compliance with the voluntary standards.

iii. Finding 3: Costs and Benefits

The Commission believes that the costs associated with the proposed requirement are reasonable, relative to the safety benefits. These costs include affixing bases to devices; designing them as a single piece; and incurring the time, materials, and shipping costs associated with those modifications. Although the Commission cannot estimate the safety benefits of improving the stability of devices, the general occurrence of tip-over incidents, and the potentially serious injuries that can result, supports the need for safety measures that would reduce them.

iv. Finding 4: Alternatives

The Commission believes that the proposed requirement is the least burdensome way to achieve the safety goal. The proposed requirement is performance-based, rather than prescriptive, allowing manufacturers numerous ways to comply. The proposal also is consistent with requirements in the voluntary standards.

6. Prohibit Devices From Projecting Fragments When Functioning

a. Proposed Requirement and Rationale

Incident data reported to the Commission for 2005 to 2015 indicate that some incidents may have involved fireworks that projected fragments when they fired, injuring bystanders. Although it was not clear in all of these incidents whether the fragments were part of a consumer fireworks device or debris in the surrounding area, the resulting injuries demonstrate the risk to consumers. The reported incidents included debris in a bystander's eye; third-degree burns on a bystander's foot; a metal shard lodged in a bystander's ankle when the device fired sideways; and first-degree burns and a corneal abrasion from a piece of metal in a bystander's eye. As these incidents demonstrate, fragments of hard materials from a firing fireworks device can cause serious injuries. Moreover, during routine compliance testing, Commission staff has observed hard plastic, metal, or other fragments expelled when fireworks devices function.

To address this safety hazard, the Commission proposes to prohibit fireworks devices from projecting sharp debris when functioning. Section 3.7.2 of APA Standard 87–1 prohibits fireworks devices from propelling sharp fragments of specific materials when set off. The AFSL Standard includes a similar, more general requirement, prohibiting devices from projecting flaming or glowing pieces (section 2–1.11). The Commission proposes to incorporate by reference the APA Standard 87–1 provision because it provides a more detailed requirement, listing specific types of materials that a fireworks device may not project, including metal, glass, and brittle plastic. However, the Commission requests comments on whether this provision should be limited to certain sizes or amounts of these fragments, rather than a strict general ban, because devices may include these materials as necessary components.

Because the regulations do not currently prohibit devices that project sharp fragments, this would be a new ban, subject to the FHSA findings.

b. FHSA Findings

i. Finding 1: Public Health and Safety

The Commission believes that this ban is necessary to adequately protect the public from the risk of serious injury that can result when fireworks devices project sharp fragments. Commission staff has observed devices project fragments when firing and incident data demonstrates the occurrence and severity of these incidents.

ii. Finding 2: Voluntary Standards

The Commission believes that APA Standard 87–1 would adequately reduce the risk of injury associated with projected fragments because it prohibits devices from projecting fragments that can injure bystanders, which is why the Commission proposes to incorporate by reference this provision of the voluntary standard. But the Commission does not believe that there is likely to be substantial compliance with that

standard, given the severity of potential injuries. As discussed above, the severity of potential injuries is a factor the Commission considers relevant in assessing the level of compliance necessary to constitute ''substantial compliance'' with a voluntary standard. *See* H.R. Rep. No. 208, 97th Cong., 1st Sess. 875 (1981). Although there are only eight reported incidents, the reported injuries demonstrate the potential severity of injuries that projected fragments can cause, including first-degree burns and eye injuries. Accordingly, the level of compliance must be particularly high.

iii. Finding 3: Costs and Benefits

The Commission believes that the benefits of the proposed requirement bear a reasonable relationship to the costs. The benefits include increased consumer safety. The costs include possibly redesigning devices to eliminate parts that may be dispersed or expelled as fragments or potentially implementing greater quality control to ensure that such parts are not dispersed or expelled as fragments. Commission staff does not have sufficient information to determine the expected costs of these modifications, but anecdotal evidence indicates that less than 10 percent of the market does not comply with the proposed requirement.

iv. Finding 4: Alternatives

The Commission believes that the proposed requirement is the least burdensome way to achieve the safety goal. The AFSL Standard and APA Standard 87–1 provide similar alternatives, and the proposed requirement is a performance-based standard that prohibits devices that project fragments and does not otherwise limit the design of devices.

B. Easing Existing Regulatory Requirements

The following proposed provision would not create any new requirements or ban any hazardous substances. Rather, the proposed provision would ease the existing regulatory requirements applicable to fireworks devices.

1. Allow Trace Amounts of Prohibited Chemicals (16 CFR 1507.2)

Section 1507.2 prohibits the presence of certain chemicals in fireworks devices. This requirement has existed in CPSC's regulations since 1976. 41 FR 9512 (Mar. 4, 1976); 41 FR 22931 (June 8, 1976). However, technology has advanced significantly since CPSC adopted this provision, and now testing can identify previously undetectable trace amounts of a chemical. This precision can make it difficult and burdensome to demonstrate the absence of prohibited chemicals in any amount because instruments often can quantify the presence of a chemical at parts per billion or parts per trillion, but not zero. Instruments and analyses that can test for the presence of chemicals at infinitesimal levels are costly and often require significant sample preparation, while simpler and less costly test methods (*e.g.,* X-Ray Fluorescence spectroscopy) are available to identify the presence of chemicals.

Given the nature of the chemicals prohibited in fireworks devices and the manner in which these chemicals appear in fireworks devices in trace amounts, the Commission believes that their presence is not intentional. In large enough amounts, these chemicals are unstable or pose health or environmental risks, so manufacturers would not deliberately add them to devices. Rather, when they are present, it is likely the result of their inadvertent presence in the environment during production. The Commission believes that trace amounts of these chemicals do not present a risk to consumers because such minimal levels would not affect the rate of reaction and consequent explosive power.

To reflect current technological capabilities, the relative difficulty and cost of identifying and eliminating all trace amounts of prohibited chemicals, the unintentional nature of trace contamination, and the negligible safety implications of trace contamination, the Commission proposes to allow trace amounts of the chemicals prohibited in 1507.2 to be present in fireworks devices.

Existing standards and Commission testing and research provide some options for selecting an appropriate trace allowance limit. APA Standard 87–1 and the AFSL Standard both allow for small amounts of prohibited chemicals as impurities. APA Standard 87–1, section 3.7.1, allows for trace amounts of all prohibited chemicals, if the trace amount is less than 0.25 percent by weight. The AFSL Standard, Appendix A, Table 1, allows for trace contamination of HCB at the limit of 0.01 percent by weight, but does not include a general allowance for all prohibited chemicals. There are also limits on lead content in other consumer products. The Consumer Product Safety Improvement Act (CPSIA; Pub. L. 110–314, 122 Stat. 3016) limits the lead content of most children's products to 0.01 percent by weight and limits lead compounds in consumer surface-coating materials to 0.009 percent by weight.

Additionally, Commission staff conducted preliminary testing to identify prohibited chemicals in fireworks devices. Examining samples collected from the Office of Compliance from fiscal years 2014 and 2015, staff found that 90 percent of the samples (29 of 32) contained titanium with 100-mesh particle size or smaller, in violation of 1507.2(j), and 38 percent of the samples (12 of 32) contained lead, which the Commission proposes to prohibit in this NPR. However, applying a trace contamination allowance of 0.25 percent by weight (consistent with APA Standard 87–1), only 9 percent (3 of 32) exceeded this limit for titanium with 100-mesh particle size or smaller and only 3 percent (1 of 32) exceeded this limit for lead compounds. Applying an even lower contamination allowance of 0.05 percent by weight, only a few samples (between 9 percent and 16 percent) exceeded this threshold for titanium with 100-mesh particle size or smaller, and none of the samples exceeded this limit for lead compounds. As discussed, various studies have found HCB in fireworks devices in ranges less than and greater than 0.01 percent, 0.05 percent, and 0.25 percent by weight.

Based on this information, there are several options that the Commission may adopt as a general allowance for all prohibited chemicals or as trace allowances for particular chemicals, such as HCB and lead tetroxide and other lead compounds. These options include:

- Allowing trace amounts:
  - Less than 0.25 percent by weight (consistent with the general limit in APA Standard 87–1);
  - less than 0.01 percent by weight (consistent with CPSIA lead limits);
  - less than 0.05 percent by weight (since CPSC's initial testing indicates that most devices comply with this level);
  - less than 0.01 percent by weight (consistent with the most stringent allowance in the voluntary standards); or
  - less than 0.009 percent by weight (consistent with the CPSIA limit on lead compounds in certain consumer materials); or
- adopting no allowance for certain chemicals.

The Commission does not have exposure data regarding the relative safety of the various trace contamination levels identified.

With the exception of HCB, the Commission proposes to allow for trace amounts up to 0.25 percent of each of

the prohibited chemicals listed in 1507.2, including lead tetroxide and other lead compounds, which the Commission proposes to add to 1507.2 in this NPR. This contamination level is consistent with the level provided in APA Standard 87–1. The Commission proposes to allow for trace amounts of 0.01 percent for HCB. This contamination level is consistent with the level provided in the AFSL Standard.

The Commission also may opt to adopt trace contamination allowances in the regulations, in compliance guidance, or in the CPSC Testing Manual. Incorporating trace allowance limits into compliance guidance or the CPSC Testing Manual would maintain the strict prohibition in the regulations but give the Commission flexibility in enforcing violations of the prohibited chemicals ban. Including these allowances in compliance guidance or the CPSC Testing Manual would not create or modify the current requirement in 1507.2, but would serve only as an option available for Commission flexibility.

C. Clarifications of Existing Regulations

The following proposed requirements would not create any new requirements or ban any hazardous substances; rather they would facilitate regulated entities' understanding of the existing or proposed regulations by providing definitions and eliminating inconsistencies. Because these proposed requirements would not create new hazardous substance bans, they do not require the Commission to make the FHSA findings.

1. Define ''Burst Charge'' (16 CFR 1500.3)

The proposed modifications to 16 CFR 1500.17(a)(3) regarding the method of identifying devices that are limited to 2 grains of pyrotechnic composition (discussed in Section IV.A.1.) focus on the content of the ''burst charge'' of the device. Additionally, ''burst charge'' appears in the proposed chemical composition and pyrotechnic weight limits (discussed in Section IV.A.2.). Consequently, the meaning of the term ''burst charge'' is central to these proposed requirements, and regulated entities need a clear understanding of the term to comply with the proposed requirements. Therefore, the Commission proposes to define ''burst charge.''

The proposed requirements in which the term ''burst charge'' would appear are consistent with provisions in APA Standard 87–1. APA Standard 87–1 defines ''burst charge'' in section 2.5, describing its function and the effects it produces—namely, that it is a chemical composition that breaks open an aerial device—and identifying ''expelling charge'' and ''break charge'' as common synonyms for ''burst charge.'' The Commission believes that this definition accurately describes the term ''burst charge.'' For that reason, and to align with the industry standard, the Commission proposes to incorporate by reference the definition of ''burst charge'' as it appears in the first two sentences of APA Standard 87–1, section 2.5.

2. Define ''Chemical Composition'' (16 CFR 1500.3)

The term ''chemical composition'' is central to the proposed chemical composition and pyrotechnic weight limits (described in Section IV.A.2.). The Commission proposes to define ''chemical composition'' so that regulated entities have a clear and precise understanding of this term to comply with the proposed limits.

The chemical composition limits that the Commission proposes are similar to those in APA Standard 87–1. APA Standard 87–1 defines ''chemical composition'' in section 2.6, describing it as pyrotechnic and explosive compositions and detailing its components. The Commission believes that this definition accurately describes ''chemical composition.'' For this reason, and to align with the industry standard, the Commission proposes to incorporate by reference the definition of ''chemical composition'' as set forth in APA Standard 87–1, section 2.6.

In addition, the Commission proposes to specify that ''chemical composition'' consists of lift charge, burst charge, and visible and audible effect materials. This additional information is not in APA Standard 87–1, but the Commission believes it clarifies information, which facilitates industry compliance with the proposed chemical composition and pyrotechnic weight limits.

3. Define ''Explosive Composition'' (16 CFR 1500.3 and 1507.1)

The proposed definition of ''chemical composition'' includes the term ''explosive composition.'' In addition, the proposed definition of ''firecrackers,'' discussed below, also includes this term. To facilitate clear and consistent industry understanding of this term, the Commission proposes to define ''explosive composition.''

APA Standard 87–1 defines ''explosive composition'' in section 2.6.1, describing the function and effect. The Commission believes that this definition accurately describes the term. For this reason, and for consistency with this recognized standard, the Commission proposes to incorporate by reference APA Standard 87–1, section 2.6.1.

4. Define ''Lift Charge'' (16 CFR 1500.3)

The chemical composition limits that the Commission proposes (described in Section IV.A.2., above) include limits on the chemical composition of ''lift charges.'' The Commission proposes to define the term ''lift charge'' so that regulated entities have a clear and consistent understanding of the components to which these limits apply.

The chemical composition limits that the Commission proposes are similar to those in APA Standard 87–1. Standard APA Standard 87–1 also defines ''lift charge'' in section 2.10, describing its function (lifting or propelling a device into the air) and composition. The Commission believes that this definition accurately describes this term. For this reason, and for consistency with the comparable requirements in APA Standard 87–1, the Commission proposes to incorporate by reference section 2.10 of APA Standard 87–1.

However, the APA Standard 87–1 definition of ''lift charge'' refers only to mine or shell devices, not all fireworks devices. As an alternative to the APA Standard 87–1 definition, the Commission believes that it may be appropriate to define ''lift charge'' in a manner that applies to all fireworks devices. The Commission requests comments on this alternative.

5. Define ''Pyrotechnic Composition'' (16 CFR 1500.3 and 1507.1)

The term ''pyrotechnic composition'' appears in several existing CPSC fireworks regulations, as well as in several of the requirements proposed in this NPR. Specifically, the term appears in the proposed definitions of ''burst charge'' and ''chemical composition''; the proposed chemical composition and pyrotechnic weight limits (described in Section IV.A.2., above); and 16 CFR 1507.3, 1507.5, 1507.9, and 1507.11 (in reference to fuse requirements, pyrotechnic leakage, toy smoke and flitter devices, and party poppers, respectively). The Commission proposes to define ''pyrotechnic composition'' so that the regulated industry has a clear and uniform understanding of this term and the related requirements. Such an understanding facilitates proper testing and regulatory compliance, which, in turn, promotes consumer safety.

Section 2.6.2 of APA Standard 87–1 defines ''pyrotechnic composition,'' describing how it functions and the

effects it produces. The Commission believes that this definition accurately describes ''pyrotechnic composition.'' For that reason, and for consistency with the industry standard, the Commission proposes to incorporate by reference APA Standard 87–1, section 2.6.2.

6. Clarify Requirements for ''Aerial Bombs'' (16 CFR 1500.3, 1500.17(a)(3) and 1500.17(a)(8))

The term ''aerial bomb'' appears twice in CPSC's fireworks regulations—in 16 CFR 1500.17(a)(3) and in 1500.17(a)(8). Section 1500.17(a)(3) bans fireworks devices intended to produce audible effects if the audible effect is produced by more than 2 grains of pyrotechnic composition. This section lists examples of devices that are ''intended to produce audible effects,'' including ''aerial bombs.'' As a result, 1500.17(a)(3) bans aerial bombs only if they contain more than 2 grains of pyrotechnic composition. In contrast, 1500.17(a)(8) bans various devices, listing each one, including ''aerial bombs.'' This provision does not limit the ban to devices containing more than 2 grains of pyrotechnic composition; rather, it bans all of the listed devices outright, including ''aerial bombs.'' As such, 1500.17(a)(3) and 1500.17(a)(8) are inconsistent.

To eliminate this inconsistency, the Commission proposes to remove ''aerial bombs'' from 1500.17(a)(3) and retain it, as written, in 1500.17(a)(8). The Commission believes that it is appropriate to ban aerial bombs entirely because they present a serious risk of injury to consumers. The proposed removal of ''aerial bombs'' from 1500.17(a)(3) would not create any new requirements or ban any new hazardous substances. Rather, the Commission would merely be maintaining one of the two existing provisions.

In addition, the Commission proposes to define ''aerial bombs'' to provide regulated entities with clarity about which devices are banned. None of the existing voluntary or international standards define ''aerial bombs.'' The Commission proposes to define ''aerial bomb'' as ''a tube device that fires an explosive charge into the air without added visual effect.''

7. Define ''Firecrackers'' (16 CFR 1500.3 and 1507.1) and Rephrase References to Firecrackers (16 CFR 1500.17(a)(3), 1500.17(a)(8), 1500.83(a)(27)(i), and 1500.85(a)(2))

The Commission proposes two revisions to clarify the regulations regarding firecrackers. First, the Commission proposes to define ''firecrackers.'' The term ''firecrackers'' appears in 1500.17, 1500.85, and 1507.1. The Commission believes that a definition of ''firecrackers'' would provide a clear understanding of what these devices include, and thereby, facilitate compliance with requirements that apply to them.

Both APA Standard 87–1 (section 3.1.3.1) and the AFSL Standard (section 1–1.7) define ''firecrackers'' in largely the same way, describing the materials and effects of a firecracker and specifying limits that apply to firecrackers. The Commission believes that both definitions are clear and accurate, but proposes to incorporate by reference the APA Standard 87–1 definition for consistency with other proposed requirements that would incorporate that standard by reference and to reduce industry burdens by requiring compliance with one voluntary standard, rather than two.

Second, the Commission proposes to revise the references to firecrackers in the regulations so that they are consistent and more straightforward. CPSC's regulations refer to ''firecrackers,'' ''firecrackers designed to produce audible effects,'' and ''devices designed to produce audible effects.'' *See* 1500.17(a)(3), 1500.17(a)(8), 1500.83(a)(27)(i), and 1500.85(a)(2). As the proposed definition of ''firecrackers'' indicates, these devices create a noise (or audible effect) when they function. This noise is an intentional effect that firecrackers are designed to produce. Therefore, ''designed to produce audible effects'' is an unnecessary qualifier for ''firecrackers.'' To make the regulations clearer and less cumbersome, the Commission proposes to replace the references to devices ''designed to produce audible effects'' in 1500.17(a)(3), 1500.17(a)(8), 1500.83(a)(27)(i), and 1500.85(a)(2) with appropriate descriptions of the term that are not redundant. This revision may also minimize confusion with the similar phrase ''intended to produce audible effects'' in 1500.17(a)(3), which refers to a different category of devices.

8. Move the Exemption for Firecrackers From the Scope Section of Part 1507 to the Individual Sections of Part 1507 That Are Relevant to Firecrackers (16 CFR 1507.1, 1507.2, and 1507.3)

Section 1507.1 establishes the scope of part 1507, stating that any fireworks devices, other than firecrackers, that are not otherwise banned, are subject to the requirements in part 1507. Only two sections within part 1507—1507.2 and 1507.3—could apply to firecrackers. In a previous rulemaking, the Commission concluded that 1507.2 should not apply to firecrackers because 1507.2 prohibits chlorates, which are common and adequately safe in firecrackers containing flash powder. 41 FR 9,520 (Mar. 4, 1976). Similarly, the Commission decided that firecrackers need not be subject to the fuse requirements in 1507.3 because the type of fuses those requirements aim to address—namely, those that create a safety hazard—are not used in firecrackers. *Id.* The remaining sections of part 1507 are specific to particular devices (none of which are firecrackers) or particular features that firecrackers do not have and, therefore, are not relevant or applicable to firecrackers. Consequently, there is no need to exempt firecrackers from the scope of those provisions.

In order to streamline the regulations, the Commission proposes to remove the exemption for firecrackers from 1507.1 and, instead, place it in the only two sections to which the exemption is relevant—1507.2 and 1507.3. This does not alter the substantive requirements or the scope of the exemption in this part. Rather, it simply lists the exemption where it is actually applicable, rather than applying it unnecessarily broadly to the entire part.

9. Make Editorial Correction to Language Regarding Fuse Attachment (16 CFR 1507.3)

Section 1507.3(b) requires fuses to remain securely attached to fireworks devices. To evaluate whether a fuse is securely attached to the device, the regulation requires the fuse to support the lesser of: (1) The weight of the fireworks device plus 8 ounces, or (2) double the weight of the device, without separating from the device. However, in describing the two alternate weight options, the regulation states: ''whether is less,'' rather than, ''whichever is less.'' Although the meaning of the regulation is apparent, the Commission proposes to correct this typographical error.

10. Define ''Base'' (16 CFR 1507.4)

Section 1507.4 specifies requirements relevant to bases of fireworks devices and, as described in Section IV.A.5., above, the Commission proposes additional requirements regarding bases in this NPR. To facilitate a clear understanding of the features subject to those requirements, the Commission also proposes to define the term ''base.''

APA Standard 87–1 does not define ''base,'' but section 1–2.1 of the AFSL Standard does, describing it as a platform from which a fireworks device functions and to which tubes are

attached. The Commission proposed to adopt a definition that is consistent with the AFSL Standard, but includes more detail to provide greater precision and clarity.

11. Define ''Burnout'' and ''Blowout'' (16 CFR 1507.6)

Section 1507.6 requires the pyrotechnic chamber in fireworks devices to be constructed ''to allow functioning in a normal manner without burnout or blowout.'' The Commission proposes to adopt definitions for ''burnout'' and ''blowout'' in order to provide a clear and consistent understanding of the existing requirement.

APA Standard 87–1 defines ''blowout'' in section 2.3 and ''burnout'' in section 2.4, describing the observable effects of these phenomena. The Commission believes that these definitions accurately capture the meaning of these terms and reflect the understanding of the fireworks industry. Therefore, the Commission proposes to incorporate by reference APA Standard 87–1, sections 2.3 and 2.4.

V. Incorporation by Reference

This NPR proposes to incorporate by reference several provisions of APA Standard 87–1. The Office of the Federal Register sets out specific procedural and content requirements to incorporate a material by reference in 1 CFR part 51. Under these regulations, an NPR must summarize the material it proposes to incorporate by reference and discuss how that material is available to interested parties. 1 CFR 51.3(a), 51.5(a). In accordance with this requirement, Sections III. and IV. of this preamble summarize the provisions of APA Standard 87–1 that the Commission proposes to incorporate by reference. Additionally, by permission of APA, interested parties may view the standard as a read-only document during the comment period of this NPR at: *http://www.americanpyro.com/.* Interested parties may also purchase a copy of APA Standard 87–1 from American Pyrotechnics Association, 7910 Woodmont Ave., Ste. 1220, Bethesda, MD 20814; *http://www.americanpyro.com/.* Interested parties may also inspect copies of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814, telephone 301–504–7923.

VI. Paperwork Reduction Act

The proposed requirements do not include any provisions that would constitute a collection of information under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). The proposed requirements do not request or require any parties to create or maintain records or disclose or report information to the Commission, any government body, the public, or third parties. Therefore, the requirements of the PRA do not apply to this NPR.

VII. Regulatory Flexibility Act

A. Introduction

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) requires agencies to consider the impact of proposed rules on small entities, including small businesses. Section 603 of the RFA requires the Commission to prepare an initial regulatory flexibility analysis (IRFA) and make it available to the public for comment when the NPR is published. The IRFA must describe the impact of the proposed rule on small entities and identify significant alternatives that accomplish the statutory objectives and minimize any significant economic impact of the proposed rule on small entities. Specifically, the IRFA must discuss:

- The reasons the agency is considering the action;
- the objectives of and legal basis for the proposed rule;
- the small entities that would be subject to the proposed rule and an estimate of the number of small entities that would be impacted;
- the reporting, recordkeeping, and other requirements of the proposed rule, including the classes of small entities subject to it and the skills necessary to prepare the reports or records; and
- the relevant federal rules that may duplicate, overlap, or conflict with the proposed rule. 5 U.S.C. 603.

In addition, the IRFA must describe any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and minimize any significant economic impact on small entities. *Id.* This section summarizes the IRFA for this proposed rule. The complete IRFA is available in the briefing package for this NPR, available at *https://www.cpsc.gov/Newsroom/FOIA/ReportList?field_nfr_type_value=commission.* To summarize, the Commission does not have enough information to determine whether all of the provisions in the proposed rule would not have a significant economic impact on a substantial number of small entities. The Commission does not expect the costs of compliance with several of the provisions to pose a significant impact to a substantial number of small entities; however, the Commission does not have enough information to estimate the costs of compliance with the provisions regarding base attachment and fragments, with precision. To further inform its decision and analysis, the Commission requests comments on the costs of complying with the provisions regarding base attachment and fragments.

B. Reasons the Agency Is Considering the Action

The Commission is considering the proposed rule to update its existing fireworks regulations to reflect the current fireworks market, changes in technology, existing fireworks standards, and safety issues associated with fireworks devices in order to reduce the risk of injury that fireworks devices present to consumers and align with other voluntary and federal standards.

C. Objectives of and Legal Basis for the Proposed Rule

The objective of the proposed rule is to update CPSC's fireworks regulations to reflect the current fireworks market, changes in technology, existing fireworks standards, and safety issues associated with fireworks devices in order to reduce the risk of injury that fireworks devices present to consumers.

The legal authority for the proposed rule is the FHSA, which authorizes the Commission to adopt regulations regarding hazardous substances and regulatory provisions necessary to enforce those requirements.

D. Small Entities Subject to the Proposed Rule

The U.S. Small Business Administration (SBA) size guidelines define manufacturers categorized under North American Industry Classification System (NAICS) codes that apply to fireworks manufacturers as ''small'' if they have fewer than 500 employees. The SBA defines importers as ''small'' if they have fewer than 100 employees (wholesalers) or less than $7.5 million in sales (retailers). AFSL, which conducts testing and certification for a substantial portion of the fireworks industry, maintains a public list of U.S. importers and Chinese manufacturers that participate in its programs. Its list includes 165 importers, of which 121 are small, six are large, and the remaining 38 are of unknown size (but likely are small). AFSL asserts that its members represent 85 percent to 90 percent of U.S. importers, indicating a total market size of 183 to 194 importers. Although some U.S. firms continue to manufacture fireworks, the vast majority of the market is imported.

E. Requirements of the Proposed Rule and the Potential Impact on Small Entities

The proposed rule includes three categories of requirements. First, the proposed rule adds definitions for various terms that appear in the regulations or in requirements proposed in this NPR and clarifies existing requirements. The proposed definitions are based on the common understanding of these terms within the fireworks industry, and are consistent with the voluntary standards; as such, they do not create any new requirements or impose any burdens on the fireworks industry. Similarly, the clarifications would not change the regulations and would not create any additional burdens.

Second, the proposed rule includes provisions to reduce burdens on the fireworks industry by allowing trace amounts of prohibited chemicals. The burdens related to this proposed requirement are discussed below.

Third, the proposed rule includes new hazardous substances bans. The burdens related to these requirements are discussed in further detail below. To summarize, the following proposed requirements may impact small entities:

- Banning fireworks devices with break charges containing metallic powder less than 100 mesh in particle size when the break charge is produced by more than 2 grains of pyrotechnic composition;
- limiting total pyrotechnic weight and chemical composition by firework type;
- prohibiting HCB and lead tetroxide and other lead compounds in fireworks devices;
- requiring the testing of fuses for side ignition;
- requiring bases remain attached to devices during storage, handling, and use; and
- banning fireworks from expelling fragments when functioning.

Typically, fireworks are manufactured overseas and imported into the United States. For this reason, most of the potential impact of this proposed rule would fall on small domestic importers, rather than small domestic manufacturers. Because the proposed rule includes changes intended to align Federal regulations with voluntary standards, many foreign manufacturers already comply with the proposed regulations. Consequently, for many importers, finding a new supplier may be a low-cost option to comply with the proposed rule.

1. Allow for Trace Contamination of Prohibited Chemicals

The proposed rule would amend 1507.2 to allow for trace amounts of prohibited chemicals in fireworks. The Commission proposes various contamination levels that align with the voluntary standards, compliance rates, and other federal standards. Because of advancements in technology, testers can now identify chemicals in such low levels that they do not pose safety hazards to consumers. Between fiscal years 2000 and 2015, CPSC found 41 violations of 1507.2. Of these violations, four came from samples that contained prohibited chemicals in concentrations below the proposed allowance limit of 0.25 percent. The total lot value of those four lots was $7,109, which represents the theoretical reduction in burden for the fireworks industry. In addition, the proposed requirement may reduce burdens by no longer requiring manufacturers to ensure the absolute absence of prohibited chemicals. Therefore, this requirement should not have a significant economic impact on a substantial number of firms.

2. Ban Fireworks Containing Metallic Powder Less Than 100 Mesh in Particle Size With Greater Than Two Grains of Pyrotechnic Material

The proposed rule would adopt a new method of identifying devices that are subject to the two-grain limit, replacing the identifier ''devices intended to produce audible effects'' with a description of the content of the devices. CPSC's preliminary testing revealed that more than 85 percent of samples do not comply with the proposed standard. Although the sample size of this testing was too small to generalize these findings, it suggests that a significant number of firms may not comply with the proposed requirement. This indicates that fireworks manufacturers may incur some costs to comply with the proposed regulation.

To comply with the proposed requirement, the Commission expects fireworks producers to replace metallic and hybrid powders with black powder formulations. The cost of switching from metallic and hybrid powders to black powder should not create a significant impact for firms that have to change formulations. Commission staff examined retail prices of aluminum, other popular powders, and black powder kits and found that aluminum ranges from $18.35 per pound to $38.67 per pound and black powder kits sell for approximately $5.20 per pound. Therefore, a firework producer switching from 2 grains of aluminum powder purchased for $18.35 per pound to 15 g of black powder purchased for $5.20 per pound would incur a material cost increase of $0.17 per shell. As these mine or shell devices typically sell for $4 to $5 per shell, the difference in fuel costs could represent up to 4 percent of retail revenues. However, because fireworks manufacturers are unlikely to pay retail prices for fuels and the applicable devices represent only a portion of a fireworks manufacturer's product line, the impact of this proposed provision on the total revenue of any manufacturer or importer is likely to be less than one percent and may not be to be significant for the affected small firms.

3. Limit the Total Pyrotechnic Weight and Chemical Composition of Fireworks Devices

The proposed rule limits the total amount of pyrotechnic material and the chemical composition in various fireworks devices. These provisions align with the limits in APA Standard 87–1. The limits in APA Standard 87–1 are high enough to allow sufficient explosive force for a fireworks device to function, even accounting for switching from flash powder and hybrid formulations to exclusively black powder. CPSC's initial testing found several devices that do not comply with the proposed limits for aerial devices. To comply with the proposed requirements, non-compliant producers would likely implement quality control measures to ensure devices comply with the specified limits. Given that many fireworks devices are made by hand, a quality control system could consist of a one-time transition to smaller measuring devices for filling fireworks with pyrotechnic material. Thus, this proposed requirement is not likely to produce a significant impact on affected small firms. The Commission does not have information about the level of compliance with the proposed limits for ground devices.

4. Ban HCB and Lead Tetroxide and Other Lead Compounds in Fireworks Devices

The proposed rule would ban HCB and lead tetroxide and other lead compounds, either entirely or in concentrations above a certain threshold for trace contamination. Although both chemicals were once prominent in fireworks formulations, they have since largely fallen out of use. The voluntary and international standards ban both chemicals, in some combination, and testing indicates that there is a fairly high level of compliance with these

bans. Although studies indicate that there are fireworks devices that contain HCB or lead tetroxide and other lead compounds, those devices do not represent a large portion of the devices on the market. Thus, although the availability of such devices poses a substantial risk to consumers, if exposed to those chemicals, the devices make up a small enough portion of the market that banning those chemicals likely would not create significant costs.

While lead was traditionally used to create ''crackle'' effects, bismuth trioxide has largely replaced it to achieve that effect because it is less expensive and more effective. HCB was prevalent in fireworks as a color enhancer, but since some standards have banned HCB, fireworks manufacturers have reduced its use. Because of the industry's limited use of these chemicals, the Commission expects that the proposed requirement would pose minimal burden to industry.

5. Require Testing for Side Ignition of Fuses

The proposed rule would amend 1507.2 to include a test for side ignition of fuses. The test is currently specified in the CPSC Testing Manual. The test requires placing the lit end of a cigarette against the side of a fuse and observing how much time elapses before it ignites. Under the proposed requirement, a device fails if it ignites within 3 seconds.

CPSC testing indicates that 99.5 percent of fireworks pass the proposed test for side ignition. The remaining 0.5 percent of fireworks may fail the test because they have not been treated to prevent side ignition or have not been sufficiently treated or coated to prevent side ignition within 3 seconds. By not defining a metric for reducing the possibility of side ignition, the current regulations leave open the question of whether those fuses that have been treated, but treated insufficiently to pass CPSC's test method, meet the standard in the regulation.

The proposed test method would require fireworks manufacturers and importers to conduct the test to issue a certificate of compliance with their products. The Commission does not know how many fireworks are currently tested for side ignition of fuses. However, a reasonable testing program associated with this requirement is unlikely to create a significant economic impact on fireworks producers. Conceivably, a producer could test the treatment or coating on a sample of fuses, conclude the treatment or coating is effective, and use the same test results for all fireworks that use the same type of fuse. Thus, a producer could amortize the costs of fuse testing across all fireworks sold with fuses.

6. Require Bases To Remain Attached During Storage, Handling, and Operation

The proposed rule requires bases to remain attached to fireworks during storage, handling, and operation. The Commission expects this requirement to have a minimal impact on manufacturers. CPSC does not test for base attachment when testing samples of fireworks, but on occasions where bases are detached, staff may note this in the testing report. In fireworks tested between Fiscal Year 1999 and the present, out of 4,554 relevant samples, 111 samples (2.4%) contained notes that bases were either missing or functioned improperly during operation.

For devices that do not meet the proposed requirement, the Commission expects firms to adapt their designs so that the device and base are one piece or to secure the base to the device with an adhesive. The potential costs of complying with the proposed regulation include additional time to affix the base to the fireworks device (seconds per device), materials for affixing the base, and potential shipping costs associated with the higher volume per device when the base is attached. Additionally, some quality control efforts may be needed to ensure that bases are attached correctly so as not to detach during storage, handling, or operation. Because only a small portion of products do not meet the proposed requirement, and the activities necessary to comply with it are low in cost, the Commission does not expect this provision to have a significant economic impact on a substantial number of small firms.

7. Ban Fireworks That Disperse Fragments

The proposed rule bans fireworks that disperse fragments when operating. This ban is also in APA Standard 87–1 and the AFSL Standard. CPSC staff has observed fragments falling from detonated fireworks during testing and incident data from 2005 through 2015 reveals eight potential incidents associated with fragments in fireworks. CPSC believes the fragments expelled from fireworks are typically due to manufacturers' intentional use of metal, glass, or brittle plastic parts. These components are not part of the effects associated with the device, but may play a role in the functioning of the device. To comply with the proposed rule, fireworks producers would have to redesign their products to not use these components or would have to implement quality control measures to ensure the device does not project these components when firing. CPSC has little information about the costs of these changes.

F. Other Relevant Federal Rules

DOT incorporates by reference APA Standard 87–1 into its regulations, which apply to fireworks when transported in commerce. Because all fireworks sold to consumers are, at some point, transported in commerce, all consumer fireworks fall under the jurisdiction of DOT and are subject to the requirements of APA Standard 87–1. However, DOT's enforcement program is limited to its jurisdiction over the transportation of hazardous materials in commerce and provisions relevant to safety during such transportation.

In estimating the burdens to manufacturers imposed by the proposed rule, the Commission relied on estimates of current compliance with APA Standard 87–1 because it is incorporated by reference into DOT's regulations. The provisions of this proposed rule aim to eliminate conflict between DOT regulations and CPSC regulations for fireworks, where it exists.

G. Alternatives

The Commission considered alternatives to the proposed requirements that impose new bans on the fireworks industry, in the interests of reducing the compliance burden.

1. Alternatives to Banning Fireworks Containing Metallic Powder Less Than 100 Mesh in Particle Size With Greater Than Two Grains of Pyrotechnic Material

Rather than adopt the proposed method of identifying devices that are limited to two grains of pyrotechnic content, the Commission could take no action. This alternative would be less burdensome than the proposed requirement, as compliance with the current regulation is higher than with the proposed requirement. However, the Commission believes that the proposed provision provides additional clarity and consistency and more-regularly identifies the more-explosive devices, thereby furthering compliance with an important safety provision. Additionally, the Commission believes that the cost of meeting the proposed requirement is low.

An additional alternative is to eliminate the 2-grain limit in more-powerful fireworks devices. However, without this limit, fireworks devices could be manufactured with greater

explosive power, presenting serious safety risks for consumers.

2. Alternatives to Limiting the Total Pyrotechnic Weight and Chemical Composition of Fireworks Devices

The Commission considered taking no action to limit the total pyrotechnic weight and chemical composition of certain fireworks devices. However, for those regulated entities that already comply with the limits in APA Standard 87–1 limits, the proposed rule would create only a minimal burden. Moreover, the proposed rule aims to limit the explosive power of fireworks devices to reduce the potential for injuries to users, and CPSC believes there is some benefit in aligning its requirements with the voluntary standards.

3. Alternatives to Banning HCB and Lead Tetroxide and Other Lead Compounds in Fireworks Devices

The Commission considered taking no action to add HCB and lead tetroxide and other lead compounds to the list of prohibited chemicals in 1507.2. However, that alternative likely would not reduce the burden of the proposed requirement substantially because many regulated entities already exclude these chemicals from their devices. The Commission also considered only prohibiting either HCB or lead tetroxide or other lead compounds, as well as various allowance levels for trace contamination. When considering the trace contamination allowance that the Commission proposes in this NPR, the burden of the proposed requirement is particularly low and aligns with the voluntary standards, and is justified given the highly hazardous nature of these chemicals.

4. Alternatives To Requiring Testing for Side Ignition of Fuses

The Commission considered taking no action to require specific testing of fuses. However, this alternative would not significantly reduce the burden of the proposed requirement on firms because CPSC already uses the proposed test for compliance testing. Additionally, the burden of testing fuses is minimal when amortized across all fireworks sold with fuses.

5. Alternatives to Requiring Bases To Remain Attached During Storage, Handling, and Operation

The Commission considered taking no action concerning base attachment. However, the proposed requirement is intended to address a specific hazard. Therefore, the Commission believes that the potential benefit of the proposed requirement outweighs the potential costs, which are unlikely to be significant for a substantial number of firms.

6. Alternatives to Banning Fireworks That Disperse Fragments

The Commission considered taking no action to ban fireworks that project fragments when firing. However, given the potential for severe injury, the Commission believes that taking no action does not sufficiently protect consumer safety.

VIII. Preemption

Section 18 of the FHSA provides that no state or political subdivision of a state may establish or continue in effect a cautionary labeling requirement or a requirement for a hazardous substance that is designed to protect against the same risk of illness or injury unless the requirement is identical to the FHSA requirement or the requirement the Commission adopts under the FHSA. 15 U.S.C. 1261n(b)(1); Section 231 of the CPSIA. However, a state or political subdivision of a state may establish or continue in effect a requirement applicable to a hazardous substance for the state or political subdivision's own use that is designed to protect against a risk of illness or injury associated with fireworks devices if it provides a higher degree of protection from that risk than the requirement in effect under the Commission's regulations. 15 U.S.C. 1261n(b)(2) and 1261n(b)(4). This allowance does not extend to labeling requirements. In addition, a state or political subdivision may apply for exemption from preemption in the circumstances specified in section 18(b)(3) of the FHSA.

Consequently, if the Commission adopts a final rule regarding fireworks under the FHSA, that rule would preempt non-identical state or local requirements if the state or local provisions specify requirements that deal with the same risk of injury CPSC's regulations aim to address. However, because the FHSA applies to requirements the Commission may impose on fireworks devices and labeling, a final rule would not prevent states and political subdivisions of a state from regulating the sale of fireworks.

IX. Effective Date

The Administrative Procedure Act requires the effective date of a rule to be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). To support the Commission's goals to update the fireworks regulations to reflect the current market and technology, provide clarity and consistency, and promote consumer safety, the Commission proposes that the updated fireworks regulations take effect 30 days after a final rule is published in the **Federal Register**. The Commission believes that this effective date is reasonable because many of the proposed requirements align with existing standards, the Commission expects the costs associated with the proposed requirements to be low, and CPSC's regulatory review briefing package, published on the Commission's Web site on December 30, 2015, provided advance notice of the potential for these requirements.

The Commission requests comments on the proposed effective date.

X. Environmental Considerations

Rules that have ''little or no potential for affecting the human environment'' fall within a ''categorical exclusion'' under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231–4370h) and the regulations implementing NEPA (40 CFR parts 1500–1508) and do not normally require an environmental assessment (EA) or environmental impact statement (EIS). As the Commission's regulations state, CPSC actions generally do not produce significant environmental effects and, therefore, generally do not require an EIS. 16 CFR 1021.5(a). The regulations further specify that rules or safety standards that provide design or performance requirements fall within the categorical exclusion from NEPA because they have little or no potential effect on the human environment. 16 CFR 1021.5(c)(1). Consequently, such rules do not require an EA or an EIS.

Because the proposed rule would create design and performance requirements for fireworks devices, the proposed rule falls within the categorical exclusion and no EA or EIS is required. Moreover, although the proposed requirements may render some fireworks non-compliant and therefore, require their disposal, the Commission believes that this impact would be minimal, particularly in light of existing standards and the time provided before the final rule would take effect. *See* 16 CFR 1021.5(b)(2). Therefore, the Commission believes that the proposed rule has ''little or no potential for affecting the human environment'' and does not require an EA or EIS.

XI. Request for Comments

The Commission requests comments on all aspects of this proposed rule, specifically regarding:

- The method of identifying devices that are subject to the 2-grain limit, including:
  - The need and usefulness of including a method of identifying in the regulations which devices are subject to the 2 grain limit;
  - the usefulness, effectiveness, costs, and benefits of the proposed method of identifying these devices, including supporting data;
  - the level of compliance with the comparable requirement in APA Standard 87–1;
  - whether there are devices that contain only black powder that should be limited to 2 grains of pyrotechnic composition because of the safety hazard they pose to consumers; and
  - whether the Commission should limit larger particle sizes of metallic powder in break charges or reports, relevant data and justifications for doing so, and the appropriate method and limit;
- the implications of the Commission electing, at times, to use its enforcement discretion to permit up to 1.00 percent contamination of metallic content in break charges, including:
  - The safety implications of such an allowance;
  - the impact of such an allowance on the costs and burdens of testing and analysis, relative to compliance with the absolute ban in the regulation;
  - a reasonable allowance level that still provides for consumer safety, along with supporting data; and
  - the implications of adopting the allowance in the regulations, as opposed to exercising it as enforcement discretion;
- the proposed limits to chemical composition and pyrotechnic weight of fireworks devices, including:
  - The benefits and costs associated with the proposed requirement;
  - the level of compliance with the requirements in APA Standard 87–1 with which the proposed requirements align;
  - whether the specific limits proposed are appropriate in light of consumer safety and fireworks devices currently on the market; and
  - the safety hazards that the ground devices that would be subject to the proposed requirement pose to consumers and any relevant incident or injury data;
- prohibiting HCB and lead tetroxide and other lead compounds from fireworks devices, including:
  - The benefits and costs associated with banning these chemicals;
  - the level of compliance with the limits for these chemicals in the AFSL Standard and APA Standard 87–1;
  - the presence of HCB in fireworks devices in the U.S. market and the corresponding frequency and levels;
  - the presence of lead tetroxide or other lead compounds in fireworks devices in the U.S. market and the corresponding frequency and levels; and
  - and exposure data regarding the impact of these chemicals in fireworks devices;
- resistance to side ignition, including:
  - Information and data about incidents involving side ignition;
  - whether a test method for evaluating side ignition would improve consumer safety; and
  - the level of compliance with the requirement in APA Standard 87–1;
- bases detaching from fireworks devices, including:
  - Whether base detachment is involved in devices tipping over, incidents, injuries, or deaths and applicable data;
  - the relative benefits and costs associated with the recommended requirement; and
  - the level of compliance with the similar requirements in APA Standard 87–1 and the AFSL Standard;
- the proposed ban of fireworks devices that project fragments when functioning, including:
  - Data regarding the types and frequency of incidents and injuries associated with fragments projected from fireworks devices;
  - the types of materials fireworks devices project as fragments that present a safety risk to the public (*e.g.,* metal, hard plastic, glass, wood);
  - whether the Commission should specify a size or amount limit for projected fragments and, if so, the appropriate size or amount and corresponding rationale;
  - the relative benefits and costs associated with the proposed requirement; and
  - the level of compliance with section 3.7.2 of APA Standard 87–1;
- a trace contamination allowance for prohibited chemicals, including:
  - Whether allowing trace amounts of prohibited chemicals adequately protects consumers from the risks associated with these chemicals;
  - which chemicals the Commission should provide trace allowances for;
  - what level of trace contamination should be permitted in light of consumer safety and inadvertent contamination;
  - the relative costs of complying with an absolute ban of prohibited chemicals and trace contamination allowances;
  - the alternatives of adopting trace contamination allowances in the regulations, in compliance guidance, or in the CPSC Testing Manual; and
  - exposure data regarding the impact of trace contamination on consumer safety;
- the usefulness and content of the proposed definitions for:
  - Burst charge;
  - chemical composition;
  - explosive composition;
  - lift charge;
  - pyrotechnic composition;
  - firecrackers;
  - bases;
  - burnout; and
  - blowout;
- aerial bombs, including:
  - The proposed definition of aerial bombs; and
  - incident and injury data regarding aerial bombs;
- the estimated costs and benefits associated with each of the proposed requirements; and
- the estimated costs to small entities for each of the proposed requirements.

During the comment period, APA Standard 87–1 is available for review. Please see Section V. of this NPR for instructions on viewing it.

Please submit comments in accordance with the instructions in the **ADDRESSES** section at the beginning of this NPR.

List of Subjects

16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, and Toys.

16 CFR Part 1507

Consumer protection, Explosives, Fireworks, and Incorporation by reference.

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

■ 1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278, 122 Stat. 3016; the Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, 104, 122 Stat. 3016 (August 14, 2008).

■ 2. Amend § 1500.3 by:
■ a. Revising paragraph (a)(2);
■ b. Adding paragraph (a)(3) through (9) and paragraph (d) to read as follows:

§ 1500.3 Definitions.

(a) * * *

(2) *Aerial bomb* means a tube device that fires an explosive charge into the air without added visual effect.

(3) *Burst charge,* also known as *expelling charge* or *break charge,* is as defined in section 2.5 of APA Standard 87–1 (incorporated by reference, see paragraph (d) of this section).

(4) *Chemical composition,* includes lift charge, burst charge, and visible/audible effect materials and is as defined in section 2.6 of APA Standard 87–1 (incorporated by reference, see paragraph (d) of this section).

(5) *Commission* means the Consumer Product Safety Commission established May 14, 1973, pursuant to provisions of the Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207–33 (15 U.S.C. 2051–81)).

(6) *Explosive composition,* is as defined in section 2.6.1 of APA Standard 87–1 (incorporated by reference, see paragraph (d) of this section).

(7) *Firecracker,* is as defined in section 3.1.3.1 of APA Standard 87–1 (incorporated by reference, see paragraph (d) of this section).

(8) *Lift charge,* is as defined in section 2.10 of APA Standard 87–1 (incorporated by reference, see paragraph (d) of this section).

(9) *Pyrotechnic composition,* is as defined in section 2.6.2 of APA Standard 87–1 (incorporated by reference, see paragraph (d) of this section).

* * * * *

(d) Certain portions, identified in this section, of APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 (APA Standard 87–1) are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51 (IBR approved for paragraph (a)). You may obtain a copy of the approved material from American Pyrotechnics Association, 7910 Woodmont Avenue, Suite 1220, Bethesda, MD 20814; telephone 301–907–8181; *http://www.americanpyro.com/.* You may inspect a copy of the approved material at the U.S. Consumer Product Safety Commission, Office of the Secretary, 4330 East-West Highway, Room 820, Bethesda, MD 20814; telephone 301–504–7923; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html.*

■ 3. Amend § 1500.17 by revising paragraphs (a)(3) and (8) and add paragraph (a)(14) to read as follows:

§ 1500.17 Banned Hazardous Substances.

(a) * * *

(3)(i) Fireworks devices that contain a burst charge containing metallic powder less than 100 mesh in particle size (including but not limited to cherry bombs, M–80 salutes, silver salutes, and kits and components intended to produce such fireworks) if the burst charge is produced by a charge of more than 2 grains (~130 mg) of pyrotechnic composition; except that this provision shall not apply to such fireworks devices if all of the following conditions are met:

* * * * *

(ii) *Findings.*

(A) *General.* In order to issue a rule under section 2(q)(1) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the FHSA requires the Commission to make certain findings and to include these findings in the regulation. These findings are discussed below.

(B) *Voluntary standards.* The Commission believes that it is unlikely that there will be substantial compliance with APA Standard 87–1, *Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics,* December 1, 2001 edition, based on the Commission's preliminary testing indicating that there is a high proportion of devices that do not comply with the comparable requirements in APA Standard 87–1 and the injury data showing the severe injuries and deaths that have resulted from devices that do not comply with this provision and vulnerability of the population at risk.

(C) *Relationship of benefits to costs.* The benefits expected from the rule, including increased public safety, bear a reasonable relationship to its costs, including minimal costs associated with modifying the contents of fireworks devices or limiting the pyrotechnic composition of devices to 2 grains.

(D) *Least-burdensome requirement.* The Commission considered less burdensome alternative methods of identifying devices that are subject to a two-grain limit on pyrotechnic composition, but concluded that none of these alternatives would adequately reduce the risk of injury.

* * * * *

(8) Firecrackers, if the explosive composition is produced by more than 50 mg (.772 grains) of pyrotechnic composition, (not including firecrackers included as components of a rocket), aerial bombs, and devices that may be confused with candy or other foods, such as ''dragon eggs,'' and ''cracker balls'' (also known as ''ball-type caps''), and including kits and components intended to produce such fireworks except such devices which meet all of the following conditions:

* * * * *

(14)(i) Fireworks devices that do not conform to the following chemical composition and pyrotechnic weight limits:

(A) *Sky Rockets, Bottle Rockets, Missile-Type Rockets, Helicopters (Aerial Spinners), and Roman Candles.* Each of these devices shall not contain more than 20 grams of chemical composition.

(B) *Mine and Shell Devices.* Devices shall conform to section 3.1.2.5 of APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version, which is incorporated by reference herein, except that:

(*1*) The lift charge of each shell is limited to black powder (potassium nitrate, sulfur, and charcoal) or similar pyrotechnic composition without metallic fuel.

(*2*) Reserved

(C) *Aerial Shells with Reloadable Tubes.* Devices shall conform to section 3.1.2.6 of APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version, which is incorporated by reference herein, except that the lift charge of each shell is limited to black powder (potassium nitrate, sulfur, and charcoal) or similar pyrotechnic composition without metallic fuel.

(D) *Cylindrical Fountains.* Devices shall conform to section 3.1.1.1 of APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version, which is incorporated by reference herein.

(E) *Cone Fountains.* Devices shall conform to section 3.1.1.2 of APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version, which is incorporated by reference herein.

(F) *Illuminating Torches.* Devices shall conform to section 3.1.1.3 of APA Standard 87–1, Standard for Construction and Approval for

Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version, which is incorporated by reference herein.

(G) *Wheels.* Devices shall conform to section 3.1.1.4 of APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version, which is incorporated by reference herein.

(H) *Chasers.* Devices shall conform to section 3.1.3.2 of APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version, which is incorporated by reference herein.

(ii) *Incorporation by reference.* Certain portions, identified in this section, of APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 (APA Standard 87–1) are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51 (IBR approved for paragraph (a)(14)). You may obtain a copy of the approved material from American Pyrotechnics Association, 7910 Woodmont Avenue, Suite 1220, Bethesda, MD 20814; telephone 301–907–8181; *http://www.americanpyro.com/.* You may inspect a copy of the approved material at the U.S. Consumer Product Safety Commission, Office of the Secretary, 4330 East-West Highway, Room 820, Bethesda, MD 20814; telephone 301–504–7923; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html.*

(iii) *Findings.*

(A) *General.* In order to issue a rule under section 2(q)(1) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the FHSA requires the Commission to make certain findings and to include these findings in the regulation. These findings are discussed below.

(B) *Voluntary standards.* The Commission believes that it is unlikely that there will be substantial compliance with APA Standard 87–1, *Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics,* December 1, 2001 edition, based on the Commission's preliminary testing indicating that a high proportion of devices does not comply with the device limits in APA Standard 87–1 and the injury data showing the severe injuries and deaths that can result from devices with particularly high pyrotechnic or chemical compositions.

(C) *Relationship of benefits to costs.* The benefits expected from the rule, including increased public safety, bear a reasonable relationship to its costs, including minimal costs associated with modifying or reducing the pyrotechnic or chemical composition of fireworks devices.

(D) *Least-burdensome requirement.* The Commission considered less burdensome alternative methods of limiting the pyrotechnic or chemical composition of fireworks devices, but concluded that none of these alternatives would adequately reduce the risk of injury.

* * * * *

■ 4. Revise § 1500.83 paragraph (a)(27)(i) to read as follows:

§ 1500.83 Exemptions for small packages, minor hazards, and special circumstances.

(a) * * *

(27) * * *

(i) The package contains only fireworks devices suitable for use by the public and designed primarily to produce visible effects by combustion, except that small devices with an explosive composition that includes metallic fuel less than 100 mesh in particle size may also be included if the burst charge or explosive composition is produced by not more than 2 grains of pyrotechnic composition;

* * * * *

■ 5. Revise § 1500.85 paragraph (a)(2) to read as follows:

§ 1500.85 Exemptions from classification as banned hazardous substances.

(a) * * *

(2) Firecrackers, if the explosive composition is produced by no more than 50 milligrams (.772 grains) of pyrotechnic composition. (See also § 1500.14(b)(7); § 1500.17(a) (3), (8) and (9); and part 1507).

* * * * *

PART 1507—FIREWORKS DEVICES

■ 6. The authority citation for part 1507 continues to read as follows:

Authority: 15 U.S.C. 1261–1262, 2079(d); 21 U.S.C. 371(e).

■ 7. Amend § 1507.1 by:

■ a. Revising the section heading,

■ b. Renumbering and revising the introductory paragraph, and

■ c. Adding paragraph (b) to read as follows:

§ 1507.1 Scope and definitions.

(a) *Scope.* This part 1507 prescribes requirements for those fireworks devices not otherwise banned under the act. Any fireworks device that fails to conform to applicable requirements is a banned hazardous substance and is prohibited from the channels of interstate commerce. Any fireworks device not otherwise banned under the act shall not be a banned hazardous substance by virtue of the fact that there are no applicable requirements prescribed herein.

(b) *Definitions.* As used in this part:

(1) *Explosive composition* is as defined in section 2.6.1 of APA Standard 87–1 (incorporated by reference, see § 1507.14).

(2) *Firecracker* is as defined in section 3.1.3.1 of APA Standard 87–1 (incorporated by reference, see § 1507.14).

(3) *Pyrotechnic composition* is as defined in section 2.6.2 of APA Standard 87–1 (incorporated by reference, see § 1507.14).

■ 8 .Revise § 1507.2 to read as follows:

§ 1507.2 Prohibited chemicals.

(a) Fireworks devices, other than firecrackers, shall not contain any of the following chemicals:

(1) Arsenic sulfide, arsenates, or arsenites, except in trace amounts less than 0.25% by weight.

(2) Boron, except in trace amounts less than 0.25% by weight.

(3) Chlorates, except in trace amounts less than 0.25% by weight and:

(i) In colored smoke mixtures in which an equal or greater amount of sodium bicarbonate is included.

(ii) In caps and party poppers.

(iii) In those small items (such as ground spinners) wherein the total powder content does not exceed 4 grams of which not greater than 15 percent (or 600 milligrams) is potassium, sodium, or barium chlorate.

(4) Gallates or gallic acid, except in trace amounts less than 0.25% by weight.

(5) Hexachlorobenzene, except in trace amounts less than 0.01% by weight.

(6) Lead tetroxide and other lead compounds, except in trace amounts less than 0.25% by weight.

(7) Magnesium, except in trace amounts less than 0.25% by weight (magnesium/aluminum alloys, called magnalium, are permitted).

(8) Mercury salts, except in trace amounts less than 0.25% by weight.

(9) Phosphorus (red or white), except in trace amounts less than 0.25% by weight. Except that red phosphorus is permissible in caps and party poppers.

(10) Picrates or picric acid, except in trace amounts less than 0.25% by weight.

(11) Thiocyanates, except in trace amounts less than 0.25% by weight.

(12) Titanium, except in particle size greater than 100-mesh or in trace amounts less than 0.25% by weight.

(13) Zirconium, except in trace amounts less than 0.25% by weight.

(b) *Findings.*

(1) *General.* In order to issue a rule under section 2(q)(1) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the FHSA requires the Commission to make certain findings and to include these findings in the regulation. These findings, with respect to hexachlorobenzene and lead tetroxide and other lead compounds, are discussed below.

(2) *Voluntary standards.* The Commission believes that it is unlikely that there will be substantial compliance with the provision prohibiting lead tetroxide and other lead compounds in APA Standard 87–1, *Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics,* December 1, 2001 edition, because testing indicates that there are devices on the market that do not comply with this provision in APA Standard 87–1, the public can absorb the chemical when it is released into the environment through fireworks devices, and the health risks associated with the chemical are severe. The Commission believes that it is unlikely that there will be substantial compliance with the provision prohibiting hexachlorobenzene and lead tetroxide and other lead compounds in the American Fireworks Standards Laboratory's voluntary standard for consumer fireworks because testing indicates that there are devices on the market that do not comply with this provision in the standard, the public can absorb these chemicals when they are released into the environment through fireworks devices, and the health risks associated with these chemicals are severe.

(3) *Relationship of benefits to costs.* The benefits expected from the rule, including increased public safety, bear a reasonable relationship to its costs, including minimal costs associated with modifying the chemical content of fireworks devices.

(4) *Least-burdensome requirement.* The Commission considered less burdensome alternatives to the rule, but concluded that none of these alternatives would adequately reduce the risk of injury.

■ 9. Amend § 1507.3 by renumbering and revising paragraph (a) and (b), adding paragraph (c), to read as follows:

§ 1507.3 Fuses.

(a) Fireworks devices, other than firecrackers, that require a fuse shall use a fuse that has been treated or coated in such manner as to reduce the possibility of side ignition.

(1) The following test must be conducted to evaluate whether a fuse has been treated or coated in such manner as to reduce the possibility of side ignition:

(i) Cut the fuse at the point where the fuse enters the fireworks device. If the fuse is wrapped in paper, plastic, or taped to the device, remove the fuse with the paper, plastic, and/or tape intact; and

(ii) Place the glowing tip of a lit standard NIST (SRM 1196) cigarette directly on the side of the fuse (or the paper, plastic, or tape attached to the fuse) and time, in seconds, how long it takes for the fuse to ignite.

(2) The fuse must not ignite within 3 seconds.

(3) The following devices are exempted from § 1507.3(a)(1) and (2):

(i) Devices such as ground spinners that require a restricted orifice for proper thrust and contain less than 6 grams of pyrotechnic composition.

(ii) Devices with fuses that protrude less than ½ inch from the device, because the end of the fuse may ignite during testing.

(4) *Findings.*

(i) *General.* In order to issue a rule under section 2(q)(1) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the FHSA requires the Commission to make certain findings and to include these findings in the regulation. These findings are discussed below.

(ii) *Voluntary standards.* The Commission believes that there is not likely to be substantial compliance with the side ignition test method in APA Standard 87–1, *Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics,* December 1, 2001 edition, because the severity of injuries that can result from side ignition of fuses are such that a particularly high level of compliance is necessary.

(iii) *Relationship of benefits to costs.* The benefits expected from the rule, including increased public safety, bear a reasonable relationship to its costs, including minimal costs associated with treating fuses to resist side ignition and testing fuses for compliance with the requirement.

(iv) *Least-burdensome requirement.* The Commission considered less burdensome alternatives to the rule, but concluded that none of these alternatives would adequately reduce the risk of injury. The rule is consistent with voluntary standards and the Commission's current testing and enforcement practices.

(b) Fireworks devices, other than firecrackers, that require a fuse shall use a fuse that will burn at least 3 seconds but not more than 9 seconds before ignition of the device.

(c) For fireworks devices, other than firecrackers, that require a fuse, the fuse shall be securely attached so that it will support either the weight of the fireworks device plus 8 ounces of dead weight or double the weight of the device, whichever is less, without separation from the fireworks device.

■ 10. Revise § 1507.4 to number the paragraphs and to add paragraphs (a)(2) and (b) to read as follows:

§ 1507.4 Bases.

(a) The base of fireworks devices that are operated in a standing upright position shall:

(1) Have the minimum horizontal dimensions or the diameter of the base equal to at least one-third of the height of the device including any base or cap affixed thereto; and

(2)(i) Remain securely attached to the device during handling, storage, and normal operation.

(ii) *Findings.*

(A) *General.* In order to issue a rule under section 2(q)(1) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the FHSA requires the Commission to make certain findings and to include these findings in the regulation. These findings are discussed below.

(B) *Voluntary standards.* The Commission believes that compliance with APA Standard 87–1, *Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics,* December 1, 2001 edition or the American Fireworks Standards Laboratory's voluntary standard for consumer fireworks is not likely to adequately reduce the risk of injury and that it is unlikely that there will be substantial compliance with either of these two voluntary standards, based on the Commission's preliminary testing indicating that there is a high

proportion of devices that have no bases or that have bases that detach from the device during handling, storage, or use and the injury data showing the severe injuries that can result when devices tip over or have unexpected flight paths, both of which can result from detached bases.

(C) *Relationship of benefits to costs.* The benefits expected from the rule, including increased public safety, bear a reasonable relationship to its costs, including minimal costs associated with affixing bases to devices and increased shipping costs.

(D) *Least-burdensome requirement.* The Commission considered less burdensome alternatives to the rule, but concluded that none of these alternatives would adequately reduce the risk of injury.

(b) For purposes of this section, the base means the bottom-most part or foundation attached to one or more tubes of a fireworks device that serves as a flat, stabilizing surface from which the device may function.

■ 11. Revise § 1507.6 to read as follows:

§ 1507.6 Burnout and blowout.

(a) The pyrotechnic chamber in fireworks devices shall be constructed in a manner to allow functioning in a normal manner without burnout or blowout.

(b) As used in this section, the terms blowout and burnout are as defined in sections 2.3 and 2.4, respectively, of APA Standard 87–1 (incorporated by reference, see § 1507.14).

■ 12. Add § 1507.13 to read as follows:

§ 1507.13 Fragments.

(a) Fireworks devices must function in accordance with section 3.7.2 of APA Standard 87–1 (incorporated by reference, see § 1507.14).

(b) *Findings.*

(1) *General.* In order to issue a rule under section 2(q)(1) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the FHSA requires the Commission to make certain findings and to include these findings in the regulation. These findings are discussed below.

(2) *Voluntary standards.* The Commission believes it is unlikely that there will be substantial compliance with the provisions in APA Standard 87–1, *Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics,* December 1, 2001 edition or the American Fireworks Standards Laboratory's voluntary standard for consumer fireworks that prohibit devices from projecting sharp fragments, based on the Commission's preliminary testing indicating that there are devices on the market that project sharp fragments when functioning and injury data showing the severe injuries that can result when projected fragments strike bystanders.

(3) *Relationship of benefits to costs.* The benefits expected from the rule, including increased public safety, bear a reasonable relationship to its costs, including minimal costs associated redesigning fireworks devices.

(4) *Least-burdensome requirement.* The Commission considered less burdensome alternatives to the rule, but concluded that none of these alternatives would adequately reduce the risk of injury.

■ 13. Add § 1507.14 to read as follows:

§ 1507.14 Incorporation by reference.

Certain portions, identified in this part, of APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 (APA Standard 87–1) are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51 (IBR approved for §§ 1507.1, 1507.6, and 1507.13). You may obtain a copy of the approved material from American Pyrotechnics Association, 7910 Woodmont Avenue, Suite 1220, Bethesda, MD 20814; telephone 301–907–8181; *http://www.americanpyro.com/.* You may inspect a copy of the approved material at the U.S. Consumer Product Safety Commission, Office of the Secretary, 4330 East-West Highway, Room 820, Bethesda, MD 20814; telephone 301–504–7923; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html.*

Dated: January 26, 2017.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2017–02014 Filed 2–1–17; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 39

[Docket No. AD17–9–000]

Petition for Rulemaking; Foundation for Resilient Societies

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of petition for rulemaking.

SUMMARY: The Federal Energy Regulatory Commission has received a petition from the Foundation for Resilient Societies requesting the Commission initiate a rulemaking to require an enhanced reliability standard to detect, report, mitigate, and remove malware from the Bulk Power System, all as more fully explained in its petition.

DATES: Comments are due by 5 p.m. February 17, 2017.

ADDRESSES: The Commission encourages electronic submission of comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the comments to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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

SUPPLEMENTARY INFORMATION: On January 13, 2017, the Foundation for Resilient Societies, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, filed a petition requesting that the Commission initiate a rulemaking to require an enhanced reliability standard to detect, report, mitigate, and remove malware from the Bulk Power System, all as more fully explained in its petition.

Any person that wishes to comment in this proceeding must file comments in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 (2016). Comments will be considered by the Commission in determining the appropriate action to be taken. Comments must be filed on or before the comment date.

This filing is accessible on-line at *http://www.ferc.gov,* using the

''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 17, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–02065 Filed 2–1–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0131: FRL–9959–01–Region 10]

Air Plan Approval; AK, Fairbanks North Star Borough; 2006 $PM_{2.5}$ Moderate Area Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the State of Alaska (Alaska) to address Clean Air Act (CAA or Act) requirements for the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) in the Fairbanks North Star Borough Moderate $PM_{2.5}$ nonattainment area (FNSB NAA). Alaska submitted an attainment plan on December 31, 2014, and made additional submissions and provided clarifying information to supplement the attainment plan for the area in January 2015, March 2015, July 2015, November 2015, March 2016, November 2016, and January 2017 (hereafter, the initial submission and all supplemental and clarifying information will be collectively referred to as ''the FNSB Moderate Plan'').

DATES: Written comments must be received on or before March 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2015–0131, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency, Region 10, 1200 Sixth Ave, Suite 900, Seattle, WA 98101; telephone number: 206–553–6121, email address: *vaupel.claudia@epa.gov.*

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

Table of Contents:

I. Background for the EPA's Proposed Action
A. Regulatory Background
B. FNSB NAA Background
II. The EPA's Evaluation of the FNSB Moderate Plan
A. Emissions Inventories
B. Pollutants Addressed
C. Reasonably Available Control Measures/Reasonably Available Control Technology
D. Air Quality Modeling
E. Demonstration That Attainment by the Moderate Area Attainment Date Is Impracticable
F. Reasonable Further Progress and Quantitative Milestones
G. Contingency Measures
H. Motor Vehicle Emissions Budgets
I. FNSB NAA Exceptional Event Demonstrations and Concurrences
III. Proposed Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background for the EPA's Proposed Action

A. Regulatory Background

On October 17, 2006, the EPA strengthened the 24-hour $PM_{2.5}$ NAAQS by lowering the level of the standards from 65 $\mu g/m^3$ to 35 $\mu g/m^3$ in order to provide increased protection of public health (40 CFR 50.13).[1] Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and premature mortality. Other important adverse health effects associated with elevated $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function and increased respiratory symptoms. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children (78 FR 3088, January 15, 2013). $PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$'') or can be formed in the atmosphere as a result of various chemical reactions among precursor pollutants such as nitrogen oxides, sulfur oxides, volatile organic compounds, and ammonia (''secondary $PM_{2.5}$'').[2]

Following promulgation of a new or revised NAAQS, the EPA is required by section 107(d)(1) of the CAA to designate areas throughout the United States as attainment, nonattainment, or unclassifiable for the NAAQS. Nonattainment areas include both areas that are violating the NAAQS, and nearby areas with emissions sources or activities that contribute to violations in those areas. States with areas designated nonattainment are required to prepare and submit a plan for attaining the NAAQS in the area as expeditiously as practicable.

The requirements for attainment plans for the 2006 24-hour $PM_{2.5}$ NAAQS include the general nonattainment area planning requirements in CAA section 172 of title I, part D, subpart 1 (subpart 1) and the additional planning requirements specific to particulate matter in CAA sections 188 and 189 of title I, part D, subpart 4 (subpart 4). The EPA has a longstanding general guidance document that interprets the 1990 amendments to the CAA,

[1] *See* 71 FR 61224 (October 17, 2006). The EPA set the first NAAQS for $PM_{2.5}$ on July 18, 1997 (62 FR 36852), including annual standards of 15.0 mg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations and 24-hour (daily) standards of 65 mg/m^3 based on a 3-year average of 98th percentile 24-hour concentrations (40 CFR 50.7). In 2012, the EPA revised the annual standard to lower its level to 12 mg/m^3 (78 FR 3086, January 15, 2013, codified at 40 CFR 50.18). Unless otherwise noted, all references to the $PM_{2.5}$ standard in this notice are to the 2006 24-hour standard of 35 mg/m^3 codified at 40 CFR 50.13.

[2] *See* EPA, *Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter* (EPA–452/R–12–005, December 2012), p. 2–1.

commonly referred to as the ''General Preamble'' (57 FR 13498, April 16, 1992). The General Preamble addresses the relationship between subpart 1 and subpart 4 requirements and provides recommendations to states for meeting statutory requirements for particulate matter nonattainment planning. Specifically, the General Preamble explains that requirements applicable to Moderate area nonattainment SIPs are set forth in subpart 4, but such SIPs must also meet the general nonattainment planning provisions in subpart 1, to the extent these provisions ''are not otherwise subsumed by, or integrally related to,'' the more specific subpart 4 requirements. 57 FR 13538. On August 16, 1994, the EPA promulgated an addendum to the General Preamble providing additional guidance for particulate matter nonattainment areas. 59 FR 41988. Additionally, on August 24, 2016, the EPA issued a final rule, *Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements* ($PM_{2.5}$ Implementation Rule, 81 FR 58009), to clarify our interpretations of the statutory requirements that apply to $PM_{2.5}$ nonattainment areas.

The requirements of subpart 1 for attainment plans include, among other things: (i) The section 172(c)(1) requirements to provide for the implementation of reasonably available control measures (RACM) and reasonably available control technology (RACT), and attainment of the NAAQS; (ii) the section 172(c)(2) requirement to demonstrate reasonable further progress (RFP); (iii) the section 172(c)(3) requirement for emissions inventories; and (iv) the section 172(c)(9) requirement for contingency measures.

The subpart 4 requirements for Moderate areas are generally comparable with the subpart 1 requirements and include: (i) Section 189(a)(1)(B) requirements to demonstrate attainment by the outermost statutory Moderate area attainment date (*i.e.,* the end of the sixth calendar year following designation) or that attainment by such date is impracticable; (ii) section 189(a)(1)(C) requirements to ensure RACM will be implemented within four years of designation; (iii) section 189(c) requirements for RFP and quantitative milestones (QMs); and (iv) section 189(e) control requirements for precursor emissions from major stationary sources. In the event that the EPA reclassifies a Moderate nonattainment area to Serious, subpart 4 imposes additional requirements. In this action, the EPA is evaluating Alaska's attainment plan for the FNSB NAA for compliance with the statutory and regulatory requirements applicable to Moderate $PM_{2.5}$ nonattainment areas.

B. FNSB NAA Background

The EPA designated a portion of the Fairbanks North Star Borough as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS upon evaluation of monitored air quality data for 2006–2008 (74 FR 58689, November 13, 2009). Based on the 43 $\mu g/m^3$ 2006–2008 design value at the State Office Building monitoring site, Alaska and the EPA determined that a portion of the Fairbanks North Star Borough was violating the NAAQS or contained sources contributing to a violation of the NAAQS. Alaska noted that exceedances of the standard occur during cold and stagnant weather patterns in the winter season and in the summer months as the result of wildfires which Alaska flagged as ''exceptional events'' in accordance with the EPA's Exceptional Events Rule at 40 CFR 50.14. At the time of designation, and also when Alaska submitted the initial FNSB Moderate Plan, the regulatory monitor in the FNSB NAA used by Alaska and the EPA was the monitor located at the State Office Building in downtown Fairbanks. Accordingly, the analyses that formed the basis of the FNSB Moderate Plan were premised upon data from this monitor location. Unless otherwise noted, monitored data and future year projections discussed in this action refer to the State Office Building monitor location.

As part of its attainment planning analysis, Alaska evaluated total $PM_{2.5}$ and speciated $PM_{2.5}$ data from the State Office Building monitor to help identify the appropriate emission control strategy for the FNSB NAA. Alaska chose the 2006–2010 period for the baseline representing conditions before emission controls and calculated a baseline design value of 44.7 $\mu g/m^3$. During the most polluted wintertime days from 2006–2010, Alaska found that ambient $PM_{2.5}$ in the area was dominated by organic carbon, followed by sulfate. The results of Alaska's analysis of the average speciated $PM_{2.5}$ mass for these days are presented by chemical species in table 1.[3] Through its analysis of observed data and modeling sources in the FNSB NAA, Alaska concludes that throughout the winter months, residential wood heating is the major source of $PM_{2.5}$ and accounts for 60–80 percent of the observed $PM_{2.5}$. Sources of secondary sulfate account for 8–20 percent of the observed $PM_{2.5}$, and diesel and gasoline engines account for 0–10 percent and 0–7 percent of the observed $PM_{2.5}$, respectively (FNSB Moderate Plan section III.D.5.8 and its associated appendix).

TABLE 1—FNSB NAA SPECIATED $PM_{2.5}$ MASS AT THE STATE OFFICE BUILDING MONITOR

Species	Observed concentration on polluted winter days ($\mu g/m^3$)
$PM_{2.5}$ Total	44.7
Organic Carbon	24.9
Elemental Carbon	2.9
Sulfate	8.2
Nitrate	1.9
Ammonium	3.6
Particle-Bound Water	2.7
Other $PM_{2.5}$	0.5

For planning and air quality modeling purposes, Alaska selected two multi-day episodes in 2008 (January 23–February 10 and November 2–17). Alaska explains that these episodes represent typical conditions in the area when $PM_{2.5}$ concentrations exceed the NAAQS, as well as the conditions leading up to the high concentrations. The January–February episode (19 days) represents a very cold episode. The average daily temperatures were below −30 °F for 6 of the 19 days. As is typical of cold, stagnant episodes, the very cold days come in batches, with warmer and less stagnant periods occurring in between. The $PM_{2.5}$ values for 10 of the days in this episode were above the 35 $\mu g/m^3$ standard and 4 of them were above 60 $\mu g/m^3$. The November episode (16 days) represents a relatively warm episode. None of the days in this episode had an average daily temperature below −10 °F. The $PM_{2.5}$ values for 6 of the days were above the 35 $\mu g/m^3$ standard and the highest days were in the vicinity of 50 $\mu g/m^3$. Alaska did not use episodes with violations during the summer months because those have historically been associated with exceptional events, such as wildfires. For purposes of the 2006 24-hour $PM_{2.5}$ NAAQS, the EPA's implementation regulations and guidance authorize states to focus their analysis on representative multi-day episodes to help to determine the most effective control strategy for a given nonattainment area.

Alaska's control strategy in the FNSB NAA focuses on reducing emissions from the key category of residential

[3] In section II.D of this proposal, we provide a more detailed discussion of air quality modeling and the presentation of speciated $PM_{2.5}$ in the area in the FNSB Moderate Plan.

heating sources that contribute to nonattainment in the area. The EPA notes that Alaska's initial December 2014 submission cited a citizen's referendum as a basis for not adopting and implementing many of the control measures analyzed. The referendum, in place from 2010 to 2014, limited the authority of the Fairbanks North Star Borough local government (the Borough) to regulate sources related to residential heating in any manner. Despite the limit on the Borough's authority, the EPA notes that under section 110 of the CAA, the State of Alaska is ultimately responsible for development and implementation of an attainment plan to meet the NAAQS by the attainment date. The EPA does not view the referendum to be a valid basis for asserting that a control measure is unreasonable. In October 2014, the referendum expired and the Borough began the process to adopt more stringent control measures for emissions from this source category. However, it was not possible for the Borough to enact these measures and for Alaska to adopt them into the SIP by the December 31, 2014 submission deadline. In February 2015, the Borough revised and strengthened its curtailment program and enacted other control measures that Alaska adopted for inclusion in the FNSB Moderate Plan and submitted to the EPA for review in a November 22, 2016 supplementary submission.

The EPA promulgated the nonattainment designation for the FNSB NAA based on data from the State Office Building monitor, which was the monitor that at the time had the requisite 3 years of complete, quality assured data for the regulatory purpose of calculating the design value for the area. Accordingly, Alaska has conducted its analyses and developed the FNSB Moderate Plan using the data from the regulatory monitor at the State Office Building. The EPA notes that an additional monitor located at the North Pole Fire Station became a regulatory monitor in 2015, subsequent to the initial submission of the FNSB Moderate Plan. The North Pole Fire Station monitor currently records the highest values in the FNSB NAA and had a 2013–2015 design value of 124 μg/m^3.

On December 16, 2016, the EPA proposed to find that the FNSB NAA did not attain by the latest permissible statutory Moderate area attainment date of December 31, 2015, and proposed to reclassify the area from Moderate to Serious pursuant to CAA section 188(b)(2). *See* 81 FR 91088. If the FNSB NAA is reclassified to Serious, Alaska will be required to submit a Serious area attainment plan by December 31, 2017. Although not used for the nonattainment designation or as part of the FNSB Moderate Plan, the EPA expects that the data from the North Pole Fire Station monitor will be included in the analyses for the development of a Serious area attainment plan for the FNSB NAA.

II. The EPA's Evaluation of the FNSB Moderate Plan

On December 31, 2014, Alaska submitted its initial Moderate area attainment plan for the FNSB NAA. Alaska made additional submissions and provided clarifying information to supplement the attainment plan in January 2015, March 2015, July 2015, November 2015, March 2016, November 2016, and January 2017 (as previously noted, the initial submission and all supplemental and clarifying information will be collectively referred to as ''the FNSB Moderate Plan'').

The primary control strategy in the FNSB Moderate Plan is to reduce emissions from residential wood combustion. The FNSB Moderate Plan includes emissions inventories, an evaluation of precursors for control in the area, RACM/RACT demonstrations for direct $PM_{2.5}$ and precursors, a demonstration that attainment by the December 31, 2015 attainment date is impracticable, QM and RFP requirements, and contingency measures. Each of these elements is discussed below.

A. Emissions Inventories

1. Requirements for Emissions Inventories

Section 172(c)(3) of the CAA requires a state with an area designated as nonattainment to submit a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant'' for the nonattainment area. By requiring an accounting of actual emissions from all sources of the relevant pollutants in the area, this section provides for the base year inventory to include all emissions from sources in the nonattainment area that contribute to the formation of a particular NAAQS pollutant. For the 2006 24-hour $PM_{2.5}$ NAAQS, this includes direct $PM_{2.5}$ (condensable and filterable) as well as the precursors to the formation of secondary $PM_{2.5}$: Nitrogen oxides (NO_X), sulfur dioxide (SO_2), volatile organic compounds (VOCs), and ammonia (NH_3). 40 CFR 51.1008; 81 FR 58028. Inclusion of $PM_{2.5}$ and all of the $PM_{2.5}$ precursors in the emissions inventory is necessary in order to inform other aspects of the attainment plan development process, such as ascertaining which pollutants a state must control in order to attain the NAAQS in the area expeditiously.

In addition to the base year inventory submitted to meet the requirements of CAA section 172(c)(3), the state must also submit future projected inventories for the projected attainment year and each QM year, and any other year of significance for meeting applicable CAA requirements. Projected emissions inventories for future years must account for, among other things, the ongoing effects of economic growth and adopted emissions control requirements, and are expected to be the best available representation of future emissions. The SIP submission should include documentation explaining how the state calculated the emissions data for the base year and projected inventories. The specific $PM_{2.5}$ emissions inventory requirements are set forth in 40 CFR 51.1008. The EPA has provided additional guidance for developing $PM_{2.5}$ emissions inventories in *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze.*[4]

2. Emissions Inventories in the FNSB Moderate Plan

The emissions inventories for the FNSB NAA are discussed in the FNSB Moderate Plan section III.D.5.6 and appendix III.D.5.6. The FNSB Moderate Plan has three emissions inventories for the area: The 2008 base year, the 2015 projected inventory for the Moderate area attainment date, and the projected inventory for the 2017 QM year. In addition, Alaska developed a projected emissions inventory for 2019 for informational purposes to facilitate development of the attainment plan. Each inventory lists direct $PM_{2.5}$ emissions and emissions of all $PM_{2.5}$ precursors (NO_X, VOCs, NH_3, and SO_2). The 2008 and 2015 inventories for the FNSB NAA include separately reported filterable and condensable components of direct $PM_{2.5}$ emissions. Alaska provided inventories from all sources in the FNSB NAA, including stationary point sources, stationary nonpoint (area sources), onroad mobile sources and nonroad mobile sources.

The inventories are based on emissions estimated during the two

[4] The EPA's *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze* is available at *https://www.epa.gov/air-emissions-inventories/emissions-inventory-guidance-documents.*

2008 episodes that represent weather conditions when exceedances of the 2006 24-hour $PM_{2.5}$ NAAQS typically occur. The inventory is an average of emissions across all days in the two episodes. It represents the average-season-day emissions, in which the emission inventory season is the wintertime episodes of cold and calm weather that coincide with exceedances of the standard.

Alaska estimated winter episode average-season-day emissions for the FNSB NAA based on a gridded inventory of actual or projected emissions developed over an area larger than the FNSB NAA for air quality modeling. The emissions were calculated for the FNSB NAA by summing the emissions from grid cells within the area.

a. 2008 Base Year Emissions Inventory

Alaska selected the year 2008 as the base year of the emissions inventory. The selection of 2008 as a base year is consistent with emissions inventory requirements because it is one of the three years that the EPA used for calculating the design value for the 2006 24-hour $PM_{2.5}$ NAAQS designations. 40 CFR 51.1008(a)(1)(i); 81 FR 58028. This inventory provides the basis for the control measure analysis, and for the RFP and impracticability demonstrations in the FNSB Moderate Plan. A summary of the 2008 base year winter episode average-season-day emissions inventory for the FNSB NAA is listed in table 2 in tons per day (tpd).

TABLE 2—2008 BASE YEAR FNSB NAA WINTER EPISODE AVERAGE-SEASON-DAY EMISSIONS INVENTORY

Source type/category	Winter episode average-season-day (tpd)				
	$PM_{2.5}$[5]	SO_2	NO_X	VOC	NH_3
Stationary Point (actual)	1.515	8.167	13.285	0.096	<0.001
Nonpoint/Area	2.817	3.865	2.184	11.627	0.136
Onroad	0.676	0.046	4.625	5.725	0.071
Nonroad	0.027	0.077	1.088	0.451	0.003
Total[6]	5.035	12.155	21.182	17.898	0.210

Stationary Point Sources: Alaska included the actual emissions of six major stationary point sources in the emissions inventory. Actual emissions were based on historically recorded facility operating throughput or continuous emissions monitoring systems for the two 2008 representative pollution episodes selected for planning purposes. Alaska defines the ''major source'' thresholds for reporting annual emissions as the potential to emit 100 tons annually for any relevant criteria air pollutant consistent with the EPA's Air Emissions Reporting Requirements, 40 CFR part 51, subpart A. Minor and synthetic minor sources (5 to 99 tons per year) were initially included in the stationary point sources category to ensure that smaller sources located within the nonattainment area just below the 100 ton per year major source threshold were also identified to determine if their emission levels might warrant inclusion in the inventory as stationary point sources. Those minor and synthetic minor sources that were not identified as stationary point sources were included in emissions inventory in the nonpoint/area sources category.

Nonpoint/Area Sources: In the FNSB NAA, emissions from various sources used to heat residential and commercial buildings are cumulatively the largest source of primary $PM_{2.5}$ emissions during $PM_{2.5}$ episodes. This category, which Alaska refers to as ''space-heating'' sources in the FNSB Moderate Plan, includes sources such as hydronic heaters, wood stoves, pellet stoves, and residential oil heating. Alaska estimated emissions differently for space-heating sources than for other non-space heating area sources. For the non-space heating area sources, data was projected from a 2005 emissions inventory with a population growth factor. The 2005 inventory combined seasonally-adjusted local activity estimates with EPA emission factors (*see* AP–42, Compilation of Air Pollution Emission Factors). Alaska also used data from the 2008 National Emissions Inventory to develop these estimates.

For space-heating sources, Alaska used EPA emissions factors and locally collected data to estimate emissions by heating device and fuel type. Local activity data was gathered from a Fairbanks winter home heating energy model, multiple residential wood heating surveys, a Fairbanks wood species study, and emissions testing of Fairbanks heating devices. Table 3 provides the space heating winter episode average-season day emissions estimates by fuel type for the 2008 base year emissions inventory for the FNSB NAA.

TABLE 3—$PM_{2.5}$ SPACE HEATING NONPOINT/AREA SOURCES EMISSIONS FOR 2008 BASE YEAR EMISSIONS INVENTORY FOR THE FNSB NAA

Space heating device/fuel type	Winter episode average-season-day (tpd)				
	$PM_{2.5}$	SO_2	NO_X	VOC	NH_3
Wood	2.656	0.084	0.373	10.914	0.098
Oil	0.056	3.719	1.617	0.088	0.003
Other	0.043	0.062	0.192	0.056	0.035

[5] Alaska reported direct $PM_{2.5}$ condensable and filterable emissions for point sources as 0.828 tpd and 0.686 tpd, respectively (*see* the November 3, 2016 clarification in the docket for this action). Alaska notes that, when accounting for the condensable component of direct $PM_{2.5}$ emissions in its clarification, direct $PM_{2.5}$ emissions from Stationary Point (actual) increased from 1.412 tpd to 1.515 tpd in the FNSB NAA. Alaska states that the increase has a small effect on $PM_{2.5}$ concentrations, approximately 0.12 $\mu g/m^3$ due to the relatively small contribution to total $PM_{2.5}$ emissions from stationary point sources compared to area space-heating sources.

[6] The 0.001 tpd discrepancy in the VOC and NH_3 totals is due to rounding.

TABLE 3—$PM_{2.5}$ SPACE HEATING NONPOINT/AREA SOURCES EMISSIONS FOR 2008 BASE YEAR EMISSIONS INVENTORY FOR THE FNSB NAA—Continued

Space heating device/fuel type	Winter episode average-season-day (tpd)				
	$PM_{2.5}$	SO_2	NO_X	VOC	NH_3
Total Space Heating[7]	2.756	3.865	2.182	11.058	0.136

On-road Sources: The onroad emissions inventory consists of mobile sources such as automobiles, trucks, buses, and motorcycles. It was prepared using the EPA's Motor Vehicle Emissions Simulator (MOVES2010a), which was the latest onroad mobile sources emissions model available at the time Alaska started developing the attainment plan inventory. Alaska used local fleet and fuel inputs and the Fairbanks Metropolitan Area Transportation System travel demand model to generate local vehicle travel activity estimates. The use of engine block heaters to keep gasoline engines from freezing during winter months is common in the FNSB NAA. Alaska explains that having such a pre-warmed engine reduces the start emissions from these vehicles. The MOVES2010a model does not normally account for the impacts of engine block heaters on vehicle emissions. To account for the effects on starting exhaust $PM_{2.5}$ emissions from wintertime plug-in block heater use in light-duty gasoline vehicles, Alaska made EPA-approved modifications to the soak time distribution inputs contained in the MOVES2010a default database. Alaska executed MOVES2010a with locally developed inputs representative of wintertime conditions and assumed default MOVES2010a activity for heavy-duty trucks.

Nonroad Sources: Alaska used the EPA's NONROAD2008a model to estimate emissions for the nonroad mobile sources. However, Alaska substituted local inputs for the EPA's default values in cases where locally derived data was available (*e.g.,* snowmobiles and snow blowers). Alaska estimated aircraft emissions with the Federal Aviation Administration's Emission and Dispersion Modeling System and locomotive emissions were estimated based on the EPA's emission factors for locomotives.

b. Projected Year Emissions Inventory

In addition to developing a 2008 base year inventory, Alaska developed a projected year inventory for the statutory Moderate area attainment year (2015), *i.e.,* the sixth calendar year after designation as a nonattainment area. This inventory was relevant to the determination of whether it was impracticable for the FNSB NAA to attain by December 31, 2015. Alaska also developed an informational projected inventory for the anticipated Serious area attainment year (2019), *i.e.,* the tenth calendar year after designation as a nonattainment area. Alaska used the same temporal period of emissions based on a winter episode average-season-day, the same level of detail, and separately reported the filterable and condensable fractions of direct $PM_{2.5}$. Alaska developed the two projected year inventories by estimating the impact on emissions from anticipated demographic and economic trends and already adopted federal, state and local control measures. Alaska then incorporated incremental emissions reductions expected to be achieved from the control measures adopted in the FNSB Moderate Plan. The two projected year inventories forecasted emissions for 2015 and 2019 for the same source categories of emissions identified in the base year inventory and were developed to support air quality modeling, demonstrate reasonable progress on reducing emissions, and to establish emission reduction milestone targets for 2017. A summary of the FNSB NAA 2015 projected winter episode average-season-day emissions inventory is provided in table 4. Table 5 provides emissions estimates from space heating sources by fuel type for the FNSB NAA winter episode average-season day for the 2015 projected emissions inventory.

TABLE 4—2015 PROJECTED FNSB NAA WINTER EPISODE AVERAGE-SEASON-DAY EMISSIONS INVENTORY

Source type/category	Winter episode average-season-day (tpd)				
	$PM_{2.5}$[8]	SO_2	NO_X	VOC	NH_3
Stationary Point (actual)	1.515	8.167	13.285	0.096	<0.001
Nonpoint/Area	2.505	4.268	2.379	9.070	0.125
Onroad	0.461	0.017	2.503	3.405	0.051
Nonroad	0.025	0.082	1.062	0.403	0.003
Total	4.506	12.534	19.229	12.974	0.179

TABLE 5—$PM_{2.5}$ SPACE HEATING NONPOINT/AREA SOURCES EMISSIONS FOR 2015 PROJECTED EMISSIONS INVENTORY FOR THE FNSB NAA

Space heating device/fuel type	Winter episode average-season-day (tpd)				
	$PM_{2.5}$	SO_2	NO_X	VOC	NH_3
Wood	2.330	0.084	0.373	8.308	0.085

[7] The 0.001 tpd discrepancy in the $PM_{2.5}$ total is due to rounding.

[8] Alaska reported direct $PM_{2.5}$ condensable and filterable emissions for point sources as 0.828 tpd and 0.686 tpd, respectively (*see* the November 3, 2016 clarification in the docket for this action). Alaska notes that, when accounting for the condensable component of direct $PM_{2.5}$ emissions in its clarification, direct $PM_{2.5}$ emissions from Stationary Point (actual) increased from 1.412 tons/day to 1.515 tons/day in the FNSB NAA. Alaska states that the increase has a small effect on $PM_{2.5}$ emissions levels, approximately 0.12 $\mu g/m^3$ due to the relatively small contribution to total $PM_{2.5}$ emissions from stationary point sources compared to area space-heating sources.

TABLE 5—$PM_{2.5}$ SPACE HEATING NONPOINT/AREA SOURCES EMISSIONS FOR 2015 PROJECTED EMISSIONS INVENTORY FOR THE FNSB NAA—Continued

Space heating device/fuel type	Winter episode average-season-day (tpd)				
	$PM_{2.5}$	SO_2	NO_X	VOC	NH_3
Oil	0.063	4.118	1.809	0.099	0.003
Other	0.047	0.066	0.194	0.061	0.036
Total Space Heating[9]	2.440	4.268	2.376	8.467	0.125

3. The EPA's Evaluation and Proposed Action: Emission Inventories

The EPA has reviewed the results, procedures, and methodologies for the FNSB NAA emissions inventories. The EPA has determined that the 2008 base year inventory and the 2015 projected inventory are based on the most current and accurate information available to Alaska at the time the FNSB Moderate Plan and its inventories were being developed. The selection of 2008 for the base year inventory is also appropriate because it reflects one of the three years of data used by the EPA in the designation process for this area. The EPA finds the episodic approach that Alaska used for the emissions inventories to be consistent with the $PM_{2.5}$ Implementation Rule in which the EPA stated that an episodic period developed in order to reflect periods of higher emissions during periods of high ambient $PM_{2.5}$ can help, in some situations, to ensure the nonattainment area inventory reflects the emissions conditions that led to the nonattainment designation for the area. 81 FR 58030. Additionally, the 2008 and 2015 inventories sufficiently provide separately reported $PM_{2.5}$ condensable and filterable emissions as required in 40 CFR 51.1008(a)(1)(iv) and (a)(2)(iv). The inventories comprehensively address all source categories in the FNSB NAA and Alaska used appropriate procedures to develop the inventories. In addition, Alaska developed the 2015 projected inventory based on the 2008 base year inventory and accounted for projected growth and reductions in emissions. We are therefore proposing to approve the 2008 base year emissions inventory for the FNSB NAA as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008(a)(1), and we are proposing to approve the 2015 projected year inventory as meeting the requirements of 40 CFR 51.1008(a)(2). We are also proposing to find that the 2008 base year inventory in the FNSB Moderate Plan provides an adequate basis for the control strategy analysis, the impracticability demonstration, and demonstrating RFP (discussed below in sections II.C, E and F, respectively).

B. Pollutants Addressed

1. Requirements for the Control of Direct $PM_{2.5}$ and Precursors

The composition of $PM_{2.5}$ is complex and highly variable due in part to the large contribution of secondary $PM_{2.5}$ to total fine particle mass in most locations, and to the complexity of secondary particle formation processes. A large number of possible chemical reactions, often non-linear in nature, can convert gaseous SO_2, NO_X, VOCs and NH_3 to $PM_{2.5}$, making them precursors to $PM_{2.5}$.[10] Formation of secondary $PM_{2.5}$ may also depend on atmospheric conditions, including solar radiation, temperature, and relative humidity, and the interactions of precursors with preexisting particles and with water and ice cloud or fog droplets.[11]

The EPA interprets the CAA to require that a state must evaluate sources of all four $PM_{2.5}$ precursors for regulation, and impose such regulations, unless it provides a demonstration establishing that it is either not necessary to regulate a particular precursor in the nonattainment area at issue in order to attain by the attainment date, or that emissions of the precursor do not make a significant contribution to $PM_{2.5}$ levels that exceed the standard. *See* 81 FR 58017. The provisions of subpart 4 do not define the term ''precursor'' for purposes of $PM_{2.5}$, nor do they explicitly require the control of any specifically identified particulate matter precursor. The definition of ''air pollutant'' in CAA section 302(g), however, provides that the term ''includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' The EPA has identified SO_2, NO_X, VOCs, and NH_3 as precursors to the formation of $PM_{2.5}$. 40 CFR 51.1000. Accordingly, the attainment plan requirements presumptively apply to emissions of direct $PM_{2.5}$ and all four precursor pollutants from all types of stationary, area, and mobile sources, except as otherwise provided in the Act (*i.e.,* CAA section 189(e)).

Section 189(e) of the Act requires that the control requirements for major stationary sources of direct PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels that exceed the standard in the area. By definition, PM_{10} includes $PM_{2.5}$. Section 189(e) contains the only express exception to the control requirements under subpart 4 (*e.g.,* requirements for RACM and RACT, best available control measures (BACM) and best available control technology (BACT), most stringent measures, and nonattainment new source review) for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions.

Although section 189(e) explicitly addresses only major stationary sources, the EPA interprets the Act as authorizing it also to determine, under appropriate circumstances, that regulation of specific $PM_{2.5}$ precursors from other source categories in a given nonattainment area is not necessary. *See* 81 FR 58018. For example, under the EPA's interpretation of the control requirements that apply to stationary, area, and mobile sources of $PM_{2.5}$ precursors area-wide under CAA section 172(c)(1) and subpart 4, the EPA's recently promulgated $PM_{2.5}$ Implementation Rule provides states the option of submitting a demonstration to show that emissions of a precursor do not contribute significantly to $PM_{2.5}$ levels which exceed the NAAQS in a particular nonattainment area. 40 CFR 51.1006. If the EPA were to approve a state's precursor demonstration, the state would not need to address the precursor in meeting certain plan

[9] The 0.001 tpd discrepancy in the VOC and NH_3 totals is due to rounding.

[10] EPA, *Air Quality Criteria for Particulate Matter* (EPA/600/P–99/002aF, October 2004), Chapter 3.

[11] EPA, *Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter* (EPA–452/R–12–005, December 2012), p. 2–1.

requirements, such as the imposition of RACM/RACT level control on sources of such precursor emissions.

The state has the option of performing either (1) a comprehensive precursor demonstration to establish that the state does not need to address the precursor in the attainment plan for purposes of the control strategy, RFP, QMs and associated reports, contingency measures, motor vehicle emissions budget, or regional emissions analyses in transportation conformity determinations, or (2) a major stationary source precursor demonstration to justify the exclusion of existing major sources from control requirements for the applicable precursor. Both types of precursor demonstrations must include a concentration-based analysis, in which the state evaluates the impact of each precursor on ambient $PM_{2.5}$ levels in the nonattainment area. A concentration-based analysis may be sufficient for the EPA to approve the demonstration, on a precursor-by-precursor basis. The state also has the option of providing an additional sensitivity-based analysis to show that changes in the emissions of a particular precursor would not result in significant changes in ambient $PM_{2.5}$ in the area. 40 CFR 51.1006(a)(iii). The EPA's Draft $PM_{2.5}$ Precursor Demonstration Guidance (Precursor Demonstration Guidance) recommends calculating the relative precursor impact in the context of the Software for the Modeled Attainment Test (SMAT) methodology so that the results are applicable to measured $PM_{2.5}$ in the area.[12]

2. Direct $PM_{2.5}$ and Precursors in the FNSB Moderate Plan

In the FNSB Moderate Plan, Alaska discusses the five pollutants that contribute to the mass of the ambient $PM_{2.5}$ (*i.e.,* NH_3, NO_X, SO_2, VOCs, and direct $PM_{2.5}$). Because Alaska developed the attainment plan before the EPA proposed a new implementation rule in 2015 (80 FR 15340, March 23, 2015), and before the EPA issued the Precursor Demonstration Guidance in 2016, the FNSB Moderate Plan includes a variety of information on precursor impacts on $PM_{2.5}$ concentrations in the FNSB NAA. Following the EPA's past approach to regulation of precursors for purposes of the PM_{10} NAAQS, Alaska submitted technical analyses to establish that regulation of specific precursors would not be an effective attainment strategy in the FNSB NAA. After the release of the $PM_{2.5}$ Implementation Rule and the Precursor Demonstration Guidance, Alaska included information in its January 6, 2017 clarification document (2017 Clarification) to help the EPA interpret its FNSB Moderate Plan in light of the new rule and guidance (*see* FNSB Moderate Plan appendix III.D.5.7 and the 2017 Clarification). Specifically, the FNSB Moderate Plan contains information necessary to evaluate a comprehensive precursor demonstration for all sources of VOCs and a major stationary source precursor demonstration for NO_X. The FNSB Moderate Plan reports speciated $PM_{2.5}$ data from the State Office Building monitor that can be compared to the recommended insignificance thresholds in the Precursor Demonstration Guidance. These data are the results of the SMAT methodology and are representative of precursor concentrations for the baseline design value of 44.7 μg/m³.

Alaska's VOC precursor demonstration examined both ambient and modeled $PM_{2.5}$ species data to help evaluate the formation of secondary organic aerosols (SOA) from VOC emissions in this specific nonattainment area. Appendix III.D.5.8 of the FNSB Moderate Plan presents several analyses involving observed chemical data, tracers of source categories, source apportionment techniques, and independent modeling efforts. Under low sunlight conditions and cold temperatures, the photochemistry normally associated with SOA production is limited.[13] Alaska explained that VOCs that are emitted likely either remain mostly unreacted in the gas phase or condense and are evaluated for emission control as the condensable part of direct $PM_{2.5}$.

In appendix III.D.5.7 of the FNSB Moderate Plan and in the 2017 Clarification, Alaska did not directly determine the impact of VOCs on $PM_{2.5}$ from speciated monitoring data alone because it is difficult to distinguish organic carbon from direct $PM_{2.5}$ and secondary organic carbon formed from VOC chemistry. Instead, the precursor demonstration relies on the predicted concentrations of SOA compounds from the Community Multiscale Air Quality (CMAQ) model. Alaska summed the episode-averaged concentrations of all 19 secondary organic compounds produced from the CMAQ modeling results at the State Office Building monitor location. The sum of all modeled SOA species represents the impact from all VOC sources on $PM_{2.5}$ at the monitor. Alaska reported the modeled $PM_{2.5}$ concentration from VOC precursors was 0.0006 μg/m³ and 0.007 μg/m³ for the 2008 base modeling year and 2015 modeling year cases, respectively.

Alaska also submitted a precursor demonstration for NO_X that modeled the $PM_{2.5}$ impact from major stationary sources of NO_X in the FNSB NAA (*i.e.,* a major stationary source demonstration, rather than a comprehensive precursor demonstration with respect to all sources of NO_X emissions in the area). *Id.* In support of the NO_X major stationary source demonstration, Alaska performed a brute force CMAQ ''zero-out'' modeling analysis, as described in the FNSB Moderate Plan and 2017 Clarification, and as recommended by the Precursor Demonstration Guidance. The CMAQ modeling results are compared between one model run in which all emission sources are included and a second ''zero out'' model run in which all major stationary source NO_X emissions in the NAA are assumed to be zero. The model results are processed through the SMAT methodology. The difference in $PM_{2.5}$ mass projected at the State Office Building monitor location between the two model simulations represents the estimated impact of major stationary source NO_X to ambient $PM_{2.5}$ in the FNSB NAA. For the 2015 model simulation, the impact from major stationary source NO_X to $PM_{2.5}$ at the State Office Building monitor location is 0.5 μg/m³ averaged across all modeled episode days (all days within the episode produce $PM_{2.5}$ less than 0.6 μg/m³).

3. The EPA's Evaluation and Proposed Action: Pollutants Addressed

In Alaska's comprehensive precursor demonstration for VOCs using a concentration-based contribution analysis, the modeled $PM_{2.5}$ concentration from VOC precursors (0.0006 μg/m³ and 0.007 μg/m³ for the 2008 base modeling year and 2015 modeling year cases, respectively) is well below 1.3 μg/m³ on a 24-hour basis, the recommended contribution threshold for the 24-hour $PM_{2.5}$ NAAQS, for precursor demonstrations identified in the Precursor Demonstration Guidance. Even the day with the highest modeled $PM_{2.5}$ production from VOCs produces only 1 percent of the insignificance threshold at the State Office Building. Alaska did not calculate the relative precursor impact in the context of the SMAT methodology because the VOC

[12] The Precursor Demonstration Guidance is available at *https://www.epa.gov/sites/production/files/2016–11/documents/transmittal_memo_and_draft_pm25_precursor_demo_guidance_11_17_16.pdf.*

[13] Joyce, P. L., von Glasow, R., and Simpson, W. R.: The fate of NO_X emissions due to nocturnal oxidation at high latitudes: 1–D simulations and sensitivity experiments, Atmos. Chem. Phys., 14, 7601–7616, doi:10.5194/acp–14–7601–2014, 2014.

precursor impact on $PM_{2.5}$ was so far below the recommended insignificance threshold in the Precursor Demonstration Guidance that a SMAT adjustment was inconsequential. The modeling results are consistent with Alaska's full suite of ambient data analyses, source apportionment techniques, and modeling efforts, all of which indicate very limited photochemical pathways and inconsequential concentrations of SOA in the FNSB NAA in the winter (*See* FNSB Moderate Plan appendix III.D.5.8).

The FNSB Moderate Plan does not provide for a NO_X comprehensive precursor demonstration because the measured ammonium nitrate at the State Office Building monitor (2.5 μg/m^3) is above the recommended 24-hour $PM_{2.5}$ contribution threshold for precursor demonstrations (1.3 μg/m^3). In Alaska's major stationary source precursor demonstration for NO_X, the episode average contribution of major stationary source NO_X to $PM_{2.5}$ (0.5 μg/m^3) is less than one half of the recommended insignificance threshold (1.3 μg/m^3) for precursor demonstrations in the Precursor Demonstration Guidance. The low amount of $PM_{2.5}$ from major stationary source NO_X precursor emissions is consistent with other aspects of the FNSB Moderate Plan. As with VOCs, the photochemistry to produce large amounts of particle-bound nitrate is limited during wintertime pollution events in the FNSB NAA. *Id.* Furthermore, major stationary sources with elevated stacks emit most of their precursors into the extremely stable atmosphere present during wintertime pollution events. Only a fraction of the elevated plumes returns to ground level in the FNSB NAA where air quality monitors are located and much less than might be expected in most parts of the lower 48 states. Therefore, the analysis indicates that NO_X emissions from these sources will have very little impact on ground level chemistry and thus on secondary $PM_{2.5}$ formation in the FNSB NAA.

Based on a review of the information provided by Alaska, we propose to approve Alaska's precursor demonstrations for major stationary source emissions of NO_X and for all sources of VOCs within the FNSB NAA. We propose to approve Alaska's analysis and conclusion that it is not necessary to evaluate and impose controls on sources of VOCs or on major stationary sources of NO_X in the control strategy for the FNSB Moderate Plan. Consistent with the requirements of subpart 4, Alaska must include all other $PM_{2.5}$ precursors (NH_3 and SO_2) and NO_X from sources other than major stationary sources in the evaluation of potential RACM/RACT control measures, RFP, QM, contingency measures, and in the impracticability demonstration. We discuss Alaska's evaluation of potential control measures for sources of NH_3, SO_2, and NO_X, as well as direct $PM_{2.5}$, in the following section.

C. Reasonably Available Control Measures/Reasonably Available Control Technology

1. Requirements for RACM/RACT

The general SIP planning requirements for nonattainment areas under subpart 1 include CAA section 172(c)(1), which requires implementation of all RACM, including RACT. The terms RACM and RACT are not further defined within subpart 1, but past guidance has described ''reasonable available'' controls as those controls that are technologically and economically feasible, and necessary for attainment in a given area. *See* 57 FR 13560. The provision explicitly requires that such measures must provide for attainment of the NAAQS in the area covered by the attainment plan.

The SIP planning requirements for particulate matter nonattainment areas in subpart 4 likewise impose upon states an obligation to develop attainment plans that implement RACM and RACT on appropriate sources within a nonattainment area. Section 189(a)(1)(C) requires that states with areas classified as Moderate nonattainment areas have SIP provisions to assure that RACM and RACT level controls are implemented by no later than four years after designation of the area. As with subpart 1, the terms RACM and RACT are not specifically defined within subpart 4, and the provisions of subpart 4 do not identify specific control measures that must be implemented to meet the RACM and RACT requirements. However, past policy has described RACM (including RACT) as those measures that are technologically and economically feasible and needed for expeditious attainment of the standard. 81 FR 58034. The EPA's recent $PM_{2.5}$ Implementation Rule provides a process for developing an attainment plan control strategy for purposes of meeting the RACM and RACT requirements.[14] *See* 40 CFR 51.1009.

To meet the Moderate area control strategy requirements, a state first needs to identify all sources of direct $PM_{2.5}$ and precursor emissions in the nonattainment area, consistent with common emission inventory development practices and requirements. 40 CFR 51.1009(a)(1). Next a state must identify existing and potential control measures for each identified source or source category of emissions. *Id.* at 51.1009(a)(2). The state's compilation of potential control measures must be sufficiently broad to provide a basis for identifying all technologically and economically feasible controls that may be RACM or RACT. The state must identify potential control measures for emissions of direct $PM_{2.5}$ and each precursor from relevant sources unless the state has provided an adequate comprehensive demonstration for the nonattainment area at issue showing that control of a particular precursor is not required, or provided an adequate demonstration with respect to control of precursor emissions from existing major stationary sources. *Id.* at 51.1009(a)(4)(i). For any potential control measure identified, a state must evaluate the technological and economic feasibility of adopting and implementing such measure. *Id.* at 51.1009(a)(3). For purposes of evaluating technological feasibility, a state may consider factors including but not limited to operating processes and procedures, raw materials, physical plant layout, and potential environmental impacts from the adoption of controls. For purposes of evaluating economic feasibility, a state may consider factors including but not limited to capital, operating and maintenance costs and the cost effectiveness of a measure (typically expressed in cost per ton of reduction). *Id.* States should also evaluate control measures imposed in other nonattainment areas as RACM and RACT as part of this analysis. For Moderate area plans that demonstrate the area cannot attain by the Moderate area statutory attainment date, the state is required to adopt all technologically and economically feasible control measures. *Id.* at 51.1009(a)(4).

CAA section 110(a)(2)(A) provides generally that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act.'' Section 172(c)(6) of the Act, which

[14] The development of the RACM and RACT requirements in the $PM_{2.5}$ Implementation Rule was informed by the EPA's longstanding guidance in the General Preamble providing recommendations for appropriate considerations for determining what control measures constitute RACM and RACT for purposes of meeting the statutory requirements of subpart 4. *See* 81 FR 58034.

applies specifically to nonattainment area plans, imposes comparable requirements.[15] Measures necessary to meet RACM/RACT and the additional control measure requirements under section 172(c)(6) must be adopted by Alaska in an enforceable form (57 FR 13541) and submitted to the EPA for approval into the SIP under CAA section 110.

2. RACM/RACT Analysis in the FNSB Moderate Plan

In the FNSB Moderate Plan, Alaska explains the multi-step process it undertook, consistent with the process set forth at 40 CFR 51.1009, to evaluate and select control measures that would constitute RACM/RACT in the FNSB NAA. Based on emissions inventory information and other technical analyses, Alaska first identified source categories in the FNSB NAA and associated emissions of $PM_{2.5}$ and its precursors. Alaska's approach to the RACM/RACT analysis targets emissions that occur during the wintertime when stagnant air episodes occur and concentrations of emissions build-up, leading to exceedances of the 2006 24-hour $PM_{2.5}$ NAAQS. Based on its assessment of estimated source category contributions to ambient $PM_{2.5}$. Alaska proceeded to identify the following source categories for further analysis: Residential wood heating, open burning, residential fuel oil combustion, automobile and heavy-duty vehicle transportation, and stationary point sources.

Alaska developed a list of potential control measures for relevant sources based on information compiled from various EPA guidance documents, information received during Alaska's public process, and information regarding controls that other states or the EPA have identified as RACM or RACT in attainment plans in other nonattainment areas. Alaska then evaluated control measures to determine if they are technologically and economically feasible, which included consideration of factors such as the emissions benefits and cost effectiveness of the measures. Alaska's RACM/RACT analysis and control strategy are presented in the FNSB Moderate Plan section III.D.5.7, appendix III.D.5.7, and the 2017 Clarification; sections III.D.5.6, III.D.5.8, and III.D.5.11 of the FNSB Moderate Plan also provide supporting information.

a. Non-Point/Area Sources RACM/RACT Analysis in the FNSB Moderate Plan

Alaska ascertained that the key category of areas sources (non-point sources) in the FNSB NAA that requires imposition of control measures to reach attainment of the 2006 24-hour $PM_{2.5}$ NAAQS is wood burning. Accordingly, Alaska's RACM/RACT analysis for the FNSB NAA evaluated control measures for residential heating and open burning. Alaska also evaluated control measures for transportation sources.

Residential Heating: Alaska identified and adopted a suite of control measures as RACM/RACT for residential heating sources in the FNSB NAA. The control measures include a changeout program that incentivizes the removal or replacement of inefficient wood-fired heating devices; a prohibition on certain fuels used in solid-fuel fired heaters, including a requirement that only dry wood, with a moisture content of 20 percent or less, can be used; curtailment of solid-fuel fired heaters during polluted conditions; a 20 percent opacity limit for solid-fuel fired heaters; the exclusion of owners of newly constructed buildings from obtaining a ''no other adequate source of heat'' determination; a wood seller wood-moisture disclosure program; setback requirements for new installations of hydronic heaters; and wood heating education and outreach programs to increase public understanding and compliance with regulations and to encourage efficient operation of wood heaters.

The changeout program in the FNSB NAA provides subsidies up to $4,000 to replace wood stoves, and up to $10,000 to replace hydronic heaters, with cleaner burning certified devices (FNSB Moderate Plan section III.D.5.7–3, III.D.5.6–50, table 5.6–18). Higher subsidies are available for removal of a solid-fuel burning device and replacement with a heating source that burns oil or natural gas. The changeout program also provides incentives for removing (rather than replacing) older uncertified devices. Subsidies to retrofit hydronic heaters to reduce emissions were also offered. Between 2010 and 2014, Alaska estimates that 3,365 solid-fuel fired heating devices were replaced and 888 devices were removed through the wood stove changeout program (FNSB Moderate Plan section III.D.5.6–51, table 5.6–19).

Alaska estimates that in the absence of a dry wood program, the average moisture content of wood used in the FNSB NAA is 39.7 percent. The requirement to burn only dry wood (moisture content of 20 percent or less) will result in more efficient residential wood heating, decreased fuel use, and reduced emissions (FNSB Moderate Plan section III.D.5.6–45).

The curtailment program in the FNSB NAA places restrictions on the operation of solid-fuel fired heaters during certain ambient and meteorological conditions (FNSB Moderate Plan section III.D.5.11 and 2017 Clarification). The solid-fuel fired heater curtailment alerts are announced by local authorities based on forecasted $PM_{2.5}$ concentrations in the three different air quality zones: Fairbanks, North Pole, and Goldstream. The curtailment program includes one voluntary and two mandatory stages. When $PM_{2.5}$ ambient levels are forecasted to reach or exceed 25 $\mu g/m^3$ or more in a particular zone, a stage one alert is issued for that zone. During a stage one alert, residents are asked to voluntarily curtail or stop using solid-fuel heating devices, pellet stoves, waste oil devices, and masonry heaters. When $PM_{2.5}$ levels are forecasted to reach 35 $\mu g/m^3$ or more in a particular zone, a stage 2 alert is issued for that zone. During a stage 2 alert, burning is only permitted in U.S. EPA certified devices, EPA Phase II hydronic heaters with $PM_{2.5}$ annual average emissions ratings of 2.5 grams per hour or less, masonry heaters, pellet stoves, and fireplaces. A stage 3 alert is issued when $PM_{2.5}$ ambient levels are forecasted to reach 55 $\mu g/m^3$. During a stage 3 alert, the use of solid-fuel burning devices, masonry heaters, pellet-fueled appliances, cook stoves, fireplaces, and waste oil devices is prohibited. The mandatory restrictions imposed during stage 2 and 3 alerts do not apply during periods of power failure or to buildings that have ''no other adequate source of heat'' designations. During a stage 3 alert, the mandatory restrictions do not apply when the temperature is below –15 °F (as recorded at the Fairbanks International Airport). Alaska included these limitations in the mandatory curtailment program due to the unique circumstances of the FNSB NAA, which experiences extreme winter temperatures and has limited availability of alternative fuel sources such as natural gas.

[15] The language in sections 110(a)(2)(A) and 172(c)(6) is quite broad, allowing a SIP to contain any enforceable ''means or techniques'' that the state and the EPA determine are ''necessary or appropriate'' to meet CAA requirements, such that the area will attain as expeditiously as practicable, but no later than the designated date. Furthermore, the express allowance for ''schedules and timetables'' demonstrates that Congress understood that all required controls might not be in force when the EPA approves a SIP submission, *e.g.,* they could include measures to be implemented in a future year. The EPA notes, however, that all SIP provisions must meet applicable legal requirements, such as imposing emission limitations that apply continuously and being practically and legally enforceable.

The voluntary programs in the FNSB NAA are expected to increase compliance with regulations and encourage behaviors that reduce emissions. These programs include public awareness and education on wood storage, heating device operation and maintenance, and curtailment alert notifications (FNSB Moderate Plan section III.D.5.7–7 and 2017 Clarification). Alaska relied on these measures for a small portion of the necessary emission reductions, consistent with EPA guidance for voluntary measures.

The residential heating control measures that Alaska identified as RACM/RACT primarily reduce emissions of direct $PM_{2.5}$. To evaluate potential measures to reduce SO_2 emissions, Alaska conducted a RACM/RACT analysis for providing economic incentives to encourage FNSB NAA residents that use heating oil to switch to low-sulfur heating oil. Alaska determined that this control measure was not cost effective at this time (FNSB Moderate Plan appendix III.D.5.7–57).

Open Burning: Alaska identified and adopted prohibitions on open burning during the wintertime as RACM/RACT for the FNSB NAA. Open burning, including the use of burn barrels, is prohibited in the FNSB NAA from November 1 through March 31. (FNSB Moderate Plan section III.D.5.7–22).

Transportation: Alaska identified and adopted a suite of transportation control measures as RACM/RACT for the FNSB NAA. These include measures providing for ''plug-in'' engine block heating, programs to encourage the use of mass transit, federal motor vehicle fuel economy standards, and federal and state diesel emissions reduction programs.

b. Stationary/Point Sources RACM/RACT Analysis in the FNSB Moderate Plan

The FNSB NAA has six major stationary point sources. Alaska evaluated these sources for potential $PM_{2.5}$ and SO_2 control technologies. As discussed in section II.B.3 of this proposal, Alaska demonstrated that VOCs and NO_X emissions from these major stationary sources do not contribute significantly to violations of the 2006 24-hour $PM_{2.5}$ NAAQS in this area, consistent with the requirements of CAA section 189(e). Alaska also excluded from consideration control technologies to address NH_3, which accounts for less than 0.001 tons per day of emissions in the FNSB NAA.

The six major stationary sources in the FNSB NAA are: Fort Wainwright Central Heating Power Plant, Aurora Energy Chena Power Plant, University of Alaska Fairbanks Campus Power Plant, GVEA North Pole Power Plant, GVEA Zehnder Power Plant, and the Flint Hills North Pole Refinery. Alaska's RACM/RACT analysis addressed 12 coal-fired boilers, five gas turbines, and two dual-fuel fired boilers at these facilities (FNSB Moderate Plan appendix III.D.5.7–64). The following is a summary of the control measures that Alaska identified as RACM/RACT for the stationary sources.

Coal-fired Boilers: Alaska provided a detailed description of the coal-fired units in the FNSB NAA including the existing controls and the 2011 direct $PM_{2.5}$ and SO_2 emissions. Six of the 12 coal-fired boilers are at the Fort Wainwright Central Heat and Power Plant. The direct $PM_{2.5}$ emissions for each of these six units were less than 5 tons per year (tpy) and the SO_2 emissions were between 87 and 171 tpy. The Aurora Energy Chena Power Plant has four coal-fired boilers that share a common stack and exhaust control system. The direct $PM_{2.5}$ emissions for the combined four units were 7.81 tpy and the SO_2 emissions were 838.9 tpy. The remaining two coal-fired boilers are at the University of Alaska Fairbanks Campus Power Plant. There are also two dual fuel-fired boilers at this power plant that use gas and liquid fuel. The direct $PM_{2.5}$ emissions for each of these boilers were less than 5 tpy and the SO_2 emissions for all of the boilers combined were 281.7 tpy.

Alaska identified fabric filters (baghouses) as RACM/RACT to control direct $PM_{2.5}$ emissions. With respect to SO_2, Alaska concluded that the use of low-sulfur fuels at these stationary sources constitutes RACM/RACT in the FNSB NAA for purposes of the 2006 24-hour $PM_{2.5}$ NAAQS (FNSB Moderate Plan appendix III.D.5.7–72).

Gas Turbines: For the five gas turbines in the FNSB NAA, Alaska analyzed the emissions of the individual units for potential RACM/RACT level emissions controls. The GVEA North Pole Power Plant has three gas turbines. Only one of these units runs at baseload throughout the year. In 2011, the direct $PM_{2.5}$ emissions for the baseload unit were 16 tpy and the SO_2 emissions were 1.9 tpy. The other two units at the GVEA North Pole Power Plant operate during peak hours. The direct $PM_{2.5}$ emissions for each of these units were 16 and 131 tpy and the SO_2 emissions were 42 and 326 tpy. The remaining two gas turbines are at the GVEA Zehnder Power Plant and ran a combined total of about 53 days in 2011. The direct $PM_{2.5}$ emissions for these units were 11 and 16 tpy. The SO_2 emissions for these units were 26 and 40 tpy.

Alaska identified the use of low sulfur naphtha and light straight-run (LSR) fuel as RACM/RACT level controls for the unit that runs at baseload throughout the year. For the other four gas turbines, Alaska determined that, in the FNSB NAA, the continued use of heavy fuel oil constitutes RACM/RACT for these units. (FNSB Moderate Plan appendix III.D.5.7–88–91).

Dual Fuel-fired Boilers: Alaska provided an analysis of potential control measures for the two dual-fired boilers at the University of Alaska Fairbanks Campus Power Plant. Alaska analyzed the individual units for RACM/RACT and provided the 2011 actual $PM_{2.5}$ and SO_2 emissions for these units. From the combustion of fuel oil, the SO_2 emissions from these units were 17.7 and 11.2 tpy. For $PM_{2.5}$, emissions were less than 5 tons per year. Alaska concluded that, in the FNSB NAA, the use of No. 2 distillate fuel constitutes RACM/RACT for these boilers. (FNSB Moderate Plan appendix III.D.5.7–87).

c. Adopted Control Strategy in the FNSB Moderate Plan

Alaska evaluated the different source categories in the FNSB NAA for potential controls. In the case of the point sources, Alaska determined that the existing level of control meets RACM/RACT requirements. With respect to mobile sources, Alaska determined that existing federal fuel and engine emission standards provide sufficient levels of emission reduction from these sources for purposes of the 2006 24-hour $PM_{2.5}$ NAAQS. In addition, however, Alaska concluded that an existing local control measure to provide for plug-in engine block heating is an appropriate RACM/RACT control measure for vehicles in this area because it will provide needed reductions in emissions during the critical winter episodes when NAAQS exceedances occur in the FNSB NAA.

Alaska's control strategy focuses primarily on imposing control measures on the key sources contributing to nonattainment during the winter season when exceedances of the 2006 24-hour $PM_{2.5}$ NAAQS occur, *i.e.,* residential wood heating. Alaska estimated that by 2015, the emissions reductions from the adopted control strategy in the FNSB Moderate Plan would result in a 5.14 $\mu g/m^3$ reduction from the baseline design value of 44.7 $\mu g/m^3$ at the State Office Building monitor (FNSB Moderate Plan section III.D.5.8, table 5.8–12 and 2017 Clarification). The emissions reductions estimated from the control strategy and the implementation

dates are summarized in the table below.

TABLE 6—FNSB MODERATE PLAN CONTROL STRATEGY

Control measure	Emission reductions		Implementation dates
	tpd	μg/m³	
Voluntary Measures:			
—Transportation	$PM_{2.5}$: 0.004	0.04	2001–2015
—Residential Heating	$PM_{2.5}$: 0.055	0.50	
Wood Heating Device Incentives:			
—Changeout Program	$PM_{2.5}$: 0.397	3.10	2010–2012
—Hydronic Heater Retrofits	SO_2: −0.014 NO_X: 0.033 NH_3: 0.014		
Energy Efficiency Measures	$PM_{2.5}$: <0.002	<0.02	2008
Opacity Limit	$PM_{2.5}$: <0.001	<0.01	2015
Open Burning	$PM_{2.5}$: <0.001	<0.01	2015
Vehicle/Device Turnover (SIP):			
—Federal Motor Vehicle Control Program (~95% of reductions)	$PM_{2.5}$: 0.135	1.50	
—Uncertified Wood Device Turnover (~5% of reductions).			
Totals	$PM_{2.5}$: 0.591 SO_2: −0.014 NO_X: 0.033 NH_3: 0.014	5.14	

3. The EPA's Evaluation and Proposed Action: RACM/RACT

The EPA proposes to approve the control strategy in the FNSB Moderate Plan. In the FNSB Moderate Plan, Alaska appropriately followed a process to analyze and select RACM/RACT level controls for this specific nonattainment area consistent with the procedures for Moderate nonattainment areas identified at 40 CFR 51.1009. The result of this process was Alaska's adoption and implementation of a control strategy that includes the identified technologically and economically feasible control measures for sources in the FNSB NAA. The EPA proposes to find that the FNSB Moderate Plan provides for the implementation of RACM/RACT as required by CAA sections 189(a)(1)(C) and 172(c)(1), and additional reasonable measures as required by CAA sections 172(c)(6) and 40 CFR 51.1009. The EPA's evaluation of the FNSB Moderate Plan indicates that the control strategy includes permanent and enforceable requirements on the appropriate sources at the relevant time of year (*i.e.* during wintertime stagnant air episodes) and takes appropriate credit for emissions reductions from the suite of control measures.

a. The EPA's Evaluation and Proposed Action: Non-Point/Area Sources—RACM/RACT

As explained previously, Alaska's initial SIP submission cited a citizen's referendum as a basis for not adopting and implementing many of the control measures analyzed. The referendum, in place from 2010 to 2014, limited the Borough's authority to regulate home heating sources in any manner, thereby effectively preventing the local government from controlling emissions from the critical heating source category.[16] The EPA does not consider social acceptability to be an appropriate basis for rejecting required emission control measures, but the capability of effective implementation and enforcement are relevant considerations. *See* 81 FR 58041. Therefore, the EPA does not view the referendum to be a valid basis for asserting that a control measure is unreasonable, whether for social, economic or technical reasons.

However, in October 2014, the referendum expired and Alaska began the process of adopting more stringent controls for the FNSB NAA, including control measures applicable to residential heating sources that are a major contributor to violations of the 2006 24-hour $PM_{2.5}$ NAAQS in this nonattainment area. Due to the timing of the expiration of the referendum, it was not possible for the Borough to enact these measures, and for Alaska to submit the measures for inclusion into the attainment plan, by the December 31, 2014 deadline for Moderate area attainment plans. In February 2015, the Borough enacted its mandatory curtailment program and other measures and Alaska adopted the measures in the SIP and submitted them for EPA review in a November 22, 2016 supplementary submission. The EPA supports ongoing state efforts to improve attainment plan control strategies and therefore believes it is appropriate to consider the entirety of adopted control measures for the FNSB NAA submitted for the EPA's review, notwithstanding the timing of the submission.

The control strategy in the FNSB Moderate Plan includes a number of control measures targeted at reducing residential wood heating emissions during the winter months when exceedances of the NAAQS typically occur. The control measures, including the wintertime open burning prohibition, dry wood requirement, visible emissions limit of 20 percent opacity, prohibited fuel sources, and mandatory curtailment program are similar to approved control programs adopted in other nonattainment areas impacted by emissions from residential wood heating sources. In addition, the FNSB Moderate plan includes emissions standards for wood stoves and hydronic heaters that are more stringent than the current EPA emissions standards for these devices. *See* 40 CFR part 60, subparts AAA and QQQQ. For example, Alaska adopted an emissions standard of 2.5 grams per hour for wood stoves, which is more stringent than the emissions standard of 4.5 grams per hour for Step 1 EPA-certified wood stoves. Also, the Borough's emissions standards apply to coal-fired heaters, which the EPA does not regulate. *See* 80 FR 13676, March 16, 2015. The control strategy includes a provision that

[16] FNSB Code 8.21.025 ''The borough shall not, in any way, regulate, prohibit, curtail, nor issue fines or fees associated with, the sale, distribution, or operation of heating appliances or any type of combustible fuel.''

excludes owners of newly constructed buildings from obtaining a ''no other adequate source of heat'' determination, which encourages installation of alternative heating sources in new buildings so that the building occupants may comply with curtailments. These control measures are beyond what is typically found in other nonattainment areas impacted by wood heating sources but were appropriate for inclusion as RACM/RACT in the FNSB Moderate Plan. Because of the specific facts and circumstances of FNSB NAA, and the severity of the nonattainment problem in this area, Alaska is appropriately focusing multiple control measures on this important source category.

Alaska did not specifically analyze area source controls for NH_3. The EPA agrees with Alaska's decision to exclude NH_3 area source controls from its analysis. The EPA is unaware of any available technologies to control NH_3 emissions from combustion sources where ammonia is emitted as a product of combustion (other than improved combustion conditions such as those achieved via wood stove changeout). Although the control strategy primarily focuses on reducing direct $PM_{2.5}$ emissions, it also provides for emissions reductions for some $PM_{2.5}$ precursors. For example, NH_3 emissions from wood heating were estimated to be 13 percent lower in the 2015 inventory than in 2008 base year inventory.

As noted, the control strategy focuses on reducing emissions from residential wood heating sources and includes control measures such as a woodstove changeout program, a requirement to use only dry wood, a mandatory curtailment program, and an opacity limit for residential heating sources. The EPA agrees that these control measures appropriately target the emissions contributing to nonattainment and provide for reductions during winter stagnation events when concentrations of emissions build-up and lead to exceedances of the 2006 24-hour $PM_{2.5}$ NAAQS.

As discussed in section II.C.2.a of this proposal, the mandatory curtailment control program has two stages, with ambient $PM_{2.5}$ trigger levels at 35 $\mu g/m^3$, referred to as a stage 2 alert, and 55 $\mu g/m^3$, referred to as a stage 3 alert. During a stage 2 alert, the only solid-fuel fired heaters that can be operated are U.S. EPA certified devices, EPA Phase II hydronic heaters with $PM_{2.5}$ annual average emissions ratings of 2.5 grams per hour or less, masonry heaters, pellet stoves, and fireplaces. During a stage 3 alert, the use of solid-fuel heaters, masonry heaters, pellet-fueled appliances, cook stoves, fireplaces, and waste oil devices is prohibited. The EPA believes that the two-stage alert system meets RACM/RACT level control requirements for this source category for the FNSB NAA. The EPA notes that the mandatory curtailment program includes applicability limitations during stage 3 alerts (no other adequate source of heat, power outage, and ambient temperatures below -15 °F). We have reviewed Alaska's mandatory curtailment program which operates in conjunction with the other control measures that apply to, and reduce emissions from, the same sources, including a 20 percent limit on opacity and a requirement that only dry wood (with a moisture content of 20 percent or less) be burned at all times. We believe the suite of control measures provides for continuous control of this source category, consistent with CAA requirements. We have also considered that many mandatory curtailment programs in other nonattainment areas contain limitations on applicability when there is no other adequate source of heat that are based on considerations of public welfare. The EPA concludes that in the FNSB NAA, where wintertime temperatures can be extreme and there is limited availability of fuel alternatives such as natural gas, the three limitations in Alaska's mandatory curtailment program similarly invoke public welfare considerations that are appropriate in the context of a Moderate area plan. Additionally, the FNSB NAA is relatively new to programs for reducing emissions from wood heating and, prior to 2015, the community had not experienced mandatory curtailments. The two-stage mandatory curtailment program is therefore appropriately suited for the FNSB NAA in that it provides for implementation of a curtailment program that will reduce emissions in a manner that can facilitate program adoption and implementation by the community. We also note that if the FNSB NAA is reclassified to Serious for failure to attain the 2006 $PM_{2.5}$ NAAQS, as proposed (81 FR 91088, December 16, 2016), Alaska will need to reevaluate and strengthen its SIP control strategy to meet the more stringent Serious area requirement for BACM.

We have reviewed Alaska's determination in the FNSB Moderate Plan that its area source control measures represent the adoption of reasonable control measures that meet RACM requirements and we believe that Alaska adequately justified its conclusions with respect to each of these measures. As noted, the EPA proposed to reclassify the FNSB NAA to Serious for failure to attain the $PM_{2.5}$ NAAQS by the December 31, 2015 attainment date. *Id.* If the reclassification is finalized, Alaska will need to reevaluate and strengthen its attainment plan control strategy for the $PM_{2.5}$ NAAQS as necessary to meet the more stringent Serious area requirement for BACM and BACT, among other requirements.

b. The EPA's Evaluation and Proposed Action: Stationary Point Sources—RACM/RACT

Alaska's RACM/RACT analysis for the six major stationary sources located in the FNSB NAA appropriately focused on $PM_{2.5}$, SO_2 and NH_3. The EPA agrees with the selection of fabric filters (baghouses) as meeting RACM/RACT-level controls for direct $PM_{2.5}$ emissions. This control technology is well established as meeting RACM/RACT for this application. In the FNSB NAA, NH_3 accounts for less than 0.001 tons per day of emissions in the FNSB NAA. Alaska's RACM/RACT analysis did not identify any control technologies for NH_3 and the EPA is unaware of any available technologies to control emissions of NH_3 from combustion sources where the ammonia is solely a product of combustion. The EPA therefore agrees with Alaska's decision with respect to stationary source controls for NH_3.

With respect to SO_2, Alaska identified a suite of controls that could potentially be implemented at the stationary sources in the FNSB NAA and conducted a cost analysis to determine the capital costs and cost effectiveness of the controls to conclude that SO_2 controls were not economically feasible. The EPA understands that, due to the fact that the FNSB Moderate Plan demonstrated the impracticability of attaining the 2006 $PM_{2.5}$ NAAQS by the end of 2015 and the expectation that the area will be reclassified from Moderate to Serious, Alaska has started working on a BACM and BACT analysis for stationary sources to strengthen its SIP control strategy to meet the more stringent Serious area requirements. Alaska conducted its RACM/RACT analysis for stationary sources with the expectation that it would need to prepare a Serious area nonattainment plan and therefore presupposing that a BACM/BACT analysis would also be required in the near future.[17] Accordingly, Alaska's conclusion that additional SO_2 emissions controls for these stationary sources were not economically feasible for purposes of

[17] The EPA has acknowledged that it is appropriate for a state to consider implementing RACM/RACT in a way that supports addressing BACM/BACT. 81 FR 58045.

meeting RACM/RACT requirements will be revisited in the context of Alaska's BACM/BACT analysis.

We have reviewed Alaska's determination in the FNSB Moderate Plan that its stationary source control measures represent the adoption of reasonable control measures that meet RACM/RACT requirements and we believe that Alaska adequately justified its conclusions with respect to each of these measures.

As discussed previously, the EPA has proposed to reclassify the FNSB NAA to Serious for failure to attain the $PM_{2.5}$ NAAQS by the December 31, 2015 attainment date (81 FR 91088). Alaska will need to reevaluate and strengthen its attainment plan control strategy for the $PM_{2.5}$ NAAQS as necessary to meet the more stringent Serious area requirement for BACM and BACT, among other requirements.

D. Air Quality Modeling

1. Requirements for Air Quality Modeling

CAA section 189(a)(1)(B) requires each state with a Moderate nonattainment area to submit a plan that includes, among other things, either (i) a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date; or (ii) a demonstration that attainment by such date is impracticable. For model attainment demonstrations, the EPA's modeling requirements are in 40 CFR part 51, appendix W (82 FR 5182, January 17, 2017). The EPA's guidance recommendations for model input preparation, model performance evaluation, use of the model output for the attainment demonstration, and modeling documentation are described in *Draft Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze* (Modeling Guidance).[18] The EPA recommends that states prepare modeling protocols as part of their modeled attainment demonstrations. The Modeling Guidance describes the topics states should address in this modeling protocol. A modeling protocol should detail and formalize the procedures for conducting all phases of the modeling analysis, such as describing the background and objectives, creating a schedule and organizational structure, developing the input data, conducting model performance evaluations, interpreting modeling results, describing procedures for using the model to demonstrate whether proposed strategies are sufficient to attain the applicable standard, and producing documentation to be submitted for EPA Regional Office review and approval prior to actual modeling.

Air quality modeling is used to establish emissions targets, the combination of emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors that the area can accommodate and still attain the standard, and to assess whether the proposed control strategy is likely to result in attainment of the relevant NAAQS. Air quality modeling is performed for representative episodes in the past and compared to air quality monitoring data collected during those episodes in order to determine model performance. To project future design values, the model response to emission reductions, in the form of relative response factors, is applied on a chemical species-by-species basis to the baseline design value, as implemented in the SMAT methodology and described in the Modeling Guidance.

In addition to a modeled attainment demonstration that focuses on locations with an air quality monitor, the 2016 $PM_{2.5}$ Implementation Rule recommends an unmonitored area analysis. This analysis is intended to ensure that a control strategy leads to reductions in $PM_{2.5}$ at other locations that have no monitor but might have base year and/or projected future year ambient $PM_{2.5}$ levels exceeding the standard. This is particularly critical where the state and/or the EPA has reason to believe that potential violations may be occurring in unmonitored areas. An unmonitored area analysis is of lesser value in the case of an impracticability demonstration that shows an area will not attain the standard at monitored locations. Finally, as discussed in the Modeling Guidance, the EPA recommends supplemental air quality analyses. These are used as part of a weight of evidence analysis, in which the likelihood of attainment is assessed by considering evidence other than the main air quality modeling attainment test.

The EPA has not issued modeling guidance specific to impracticability demonstrations, but believes that a state seeking to make such a demonstration, generally, should provide air quality modeling similar to that required for an attainment demonstration. The main difference between an attainment demonstration and an impracticability demonstration is that despite the implementation of a control strategy including RACM/RACT and additional reasonable measures, an impracticability demonstration does not demonstrate attainment of the standard by the statutory Moderate area attainment date. Alternatively, a model projection could show that the implementation of the SIP control strategy results in attainment of the standard after the statutory Moderate area attainment date. However, there are cases where modeling may not be needed to demonstrate that it is impracticable to attain by the statutory Moderate area attainment date and the EPA has therefore determined that modeling is not a regulatory requirement to support an impracticability demonstration. 40 CFR 51.1009(a)(4); 81 FR 58048. For an attainment demonstration, a thorough review of all modeling inputs and assumptions is especially important because the modeling must ultimately support a conclusion that the plan (including its control strategy) will provide for timely attainment of the applicable NAAQS.

In contrast, for an impracticability demonstration, if the state and the EPA determine that the area cannot attain the NAAQS by the latest statutory Moderate area attainment date, the result is that the EPA will reclassify the area from a Moderate nonattainment area to a Serious nonattainment area. This reclassification obligates the state to submit a new attainment plan that meets more stringent regulatory requirements (*e.g.* BACM and BACT level emission controls on sources in the area) and the requirement for a Serious area attainment demonstration that will necessarily need to include air quality modeling that demonstrates attainment by the applicable attainment date. Thus, the Serious area planning process would provide an opportunity to refine the modeling analysis and/or correct any technical shortcomings in the impracticability demonstration.

2. Air Quality Modeling in the FNSB Moderate Plan and the EPA's Evaluation

In FNSB Moderate Plan section III.D.5.8 and appendix III.D.5.8, Alaska provided air quality modeling to support its demonstration that it was impracticable for the FNSB NAA to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the statutory Moderate area attainment date of December 31, 2015. The modeling demonstration uses three-dimensional grid-based meteorological modeling and full photochemical grid modeling, combined with speciated monitoring data from 2006–2010 from

[18] The Modeling Guidance is available on the EPA's SCRAM Web site, Web page: *http://www.epa.gov/scram001/guidance_sip.htm;* direct link: *https://www3.epa.gov/scram001/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf.*

the State Office Building site in Fairbanks, to assess attainment. Alaska used the CMAQ photochemical model version 4.7.1, the most current version of the model at the time Alaska developed modeling for the FNSB Moderate Plan. Alaska examined subsequent versions of CMAQ but did not upgrade model versions because the newer versions did not include significant scientific improvements relevant for the FNSB NAA. The Weather Research Forecasting Model (model version 3.1) was used to prepare meteorological input for CMAQ. The Sparse Matrix Operator Kernal Emissions (SMOKE) processor was used to create photochemical transport model inputs. Emissions inventory estimates were combined with meteorological inputs developed for the two multiday air quality episodes of elevated $PM_{2.5}$ concentrations (January 23–February 10, 2008; and November 2–17, 2008) and with the available chemistry mechanisms in CMAQ to assess the ability of the FNSB NAA to demonstrate attainment in 2015.

To calculate the projected 2015 $PM_{2.5}$ design value, Alaska performed the SMAT methodology. Alaska used the ratio of future year (2015) to base year (2008) modeling results to derive relative response factors for each chemical species and these response factors were applied on a chemical species-by-species basis to the baseline design value. The concentrations of chemical species used in the baseline design value was an average of the monitoring data for the top 25 percent most polluted wintertime days (in the first and fourth quarters) of the years 2006–2010. Only the top 25 percent was used because there are many cleaner days when the emission source mix and contributions of $PM_{2.5}$ to the monitor are not relevant for air quality planning to meet the 24-hour $PM_{2.5}$ standard. The top 25 percent most polluted wintertime days captured the days with weather conditions and emissions patterns that occur when the standard is exceeded. The average of the speciated concentrations on the top 25 percent most polluted days were weighted to the observed $PM_{2.5}$ concentrations from the official regulatory data at the State Office Building, such that the speciated $PM_{2.5}$ data used for air quality modeling (and for the precursor demonstration) are reflective of the baseline design value of 44.7 $\mu g/m^3$. The technique was not used for the second and third quarters because an examination of the $PM_{2.5}$ data from the baseline period 2006–2010 showed that the all high monitored values from those quarters had been flagged as exceptional events and submitted to the EPA for concurrence. Therefore, second and third quarter monitoring data has no influence on the FNSB 24-hour $PM_{2.5}$ NAAQS design values.

Alaska evaluated the results of their CMAQ modeling with observed $PM_{2.5}$ mass and speciated $PM_{2.5}$ mass from the monitor at the State Office Building. The base year modeling for the two multiday episodes of 2008 used hourly meteorology and emissions specific to those episodes and are Alaska's best attempt at reproducing air quality during the two wintertime pollution episodes. Alaska selected generally accepted techniques for assessing model performance, such as goal and criteria thresholds from academic literature and past attainment modeling done by other areas. Criteria are metrics for when the modeling can be considered generally acceptable, and goals are metrics for when the modeling can be considered to be performing well. After comparing model performance to the selected techniques, Alaska concluded that the model meets modeling goals for total $PM_{2.5}$ and meets criteria for organic carbon, elemental carbon, and nitrate. In contrast, modeled estimates of the sulfate, ammonium, and other $PM_{2.5}$ components of $PM_{2.5}$ mass were underpredicted. Alaska explained that the large underprediction of sulfate is likely due to the fact that the CMAQ existing sulfate chemistry mechanisms are intended for locations with liquid water clouds, warmer temperatures, and more sunlight. Alaska notes that the underprediction of ammonium is very likely a by-product of the sulfate underprediction. Thus, Alaska believes that NH_3 controls or NO_X controls would likely still be accurately reflected in the modeling results irrespective of the large underprediction of sulfate.

In light of acceptable model performance for $PM_{2.5}$ overall and for certain chemical species, Alaska used CMAQ to test control strategies on primary $PM_{2.5}$, NO_X, and NH_3. The sulfate component of $PM_{2.5}$ was considered to stay constant in future years because, for the reasons explained above, the modeling system was not considered adequate to assess SO_2 controls. As weight of evidence, Alaska presented a sensitivity study in which in which the changes in SO_2 emissions from the control strategy are used to estimate changes in sulfate. For the purposes of the sensitivity study, Alaska assumed that sources of SO_2 are responsible for sulfate in proportion to their share of the SO_2 inventory. Because the control strategy shifts home heating fuel from relatively sulfur-poor wood to relatively sulfur-rich oil, the 2015 $PM_{2.5}$ design value in this analysis would increase by 0.5 $\mu g/m^3$. This is a relatively small increase in $PM_{2.5}$ compared to the projected decrease in $PM_{2.5}$ from the control strategy of 6.9 $\mu g/m^3$.

The FNSB Moderate Plan section III.D.5.8 also contains an unmonitored area analysis and a weight of evidence analysis as additional support for the modeling demonstration. Alaska used various analytical techniques to inform modeling decisions and to assess model performance. Statistical evaluations with positive matrix factorization and chemical mass balance modeling were used to attribute and prioritize source significance. To understand the distribution of emissions from wood burning versus fossil fuels, a Carbon-14 analysis was used to determine the age distribution of carbon molecules found at each monitoring site. Levoglucosan, an organic compound that is considered to be a tracer of biomass burning, was analyzed to assess the significance of wood burning. A dispersion modeling study using the CALPUFF model was used to characterize $PM_{2.5}$ contribution from permitted stationary sources to the State Office Building monitor.

The weight of evidence analysis consistently attributed more than 50 percent of the $PM_{2.5}$ at the State Office Building monitor to wood smoke. Stationary sources are estimated to contribute 5 percent of the measured $PM_{2.5}$ at the State Office Building monitor based on emissions of direct $PM_{2.5}$ alone, and potentially another 15 percent if all of the sulfate at the monitor could be attributed to stationary sources rather than split with residential oil heat. In contrast, Alaska's emission inventory reports that stationary sources make up 29 percent of the emissions of direct $PM_{2.5}$. The large difference between the proportion of direct $PM_{2.5}$ emissions from stationary sources and their modeled contribution at the State Office Building monitor is primarily due to the influence of the stable atmosphere near the surface, and secondarily because prevailing winds at the top of the stacks do not carry plumes of many of the stationary sources in the direction of the monitor. This shows the value of using modeling and source apportionment techniques, as compared to emissions inventory information alone, in assessing the source of $PM_{2.5}$ air pollution in the nonattainment area.

Based on the unmonitored area analysis, Alaska projects 2015 design values above the standard in several parts of the FNSB NAA, including the western part of downtown Fairbanks, to the southeast of downtown Fairbanks,

and in the North Pole area. This modeling suggests there are locations other than the State Office Building location where exceedances may be occurring. Alaska should design any Serious area plan in order to address such potential exceedances in the FNSB NAA.

3. The EPA's Conclusions on Air Quality Modeling

The EPA is proposing to find that Alaska's model is adequate for assessing whether the FNSB NAA will attain the $PM_{2.5}$ NAAQS by the statutory Moderate area attainment date, *i.e.,* by December 31, 2015, in the context of this SIP submission. The model inputs, episode selection, performance evaluation, extensive supplemental information, and attainment test methodology are well-described and conform with the state-of-the art for air quality modeling. Alaska found unacceptable model performance for some $PM_{2.5}$ chemical species, but the control strategy did not rely on controls of those chemical components. The EPA therefore proposes to find that the modeling is also adequate for purposes of supporting the control strategy analysis, RFP, and impracticability demonstrations.

As discussed previously, the EPA notes that because the FNSB NAA did not attain the 2006 24-hour $PM_{2.5}$ NAAQS by December 31, 2015, Alaska will be required to submit a Serious area SIP by December 31, 2017. In a separate action, the EPA has recently proposed to find that the area failed to attain and thus will be reclassified from Moderate to Serious if the Agency finalizes that proposal. The EPA expects Alaska to further analyze modeling gaps related to sulfate for the Serious area plan. In addition, the EPA believes that the heterogeneity of wood smoke emissions and lack of air movement during polluted episodes, will continue to make an unmonitored area analysis an important component in the Serious area plan.

E. Demonstration That Attainment by the Moderate Area Attainment Date Is Impracticable

1. Requirements for Attainment/Impracticability of Attainment Demonstrations

CAA section 189(a)(1)(B) requires that each Moderate area attainment plan include a demonstration that the plan provides for attainment by the latest applicable Moderate area deadline or, alternatively, that attainment by the latest applicable attainment date is impracticable. A demonstration that the plan provides for attainment must be based on air quality modeling, and the EPA generally recommends that a demonstration of impracticability also be based on air quality modeling and be consistent with the EPA's modeling regulations and guidance (51.1011(a)(2); 51.1011(a)(4)(ii); and 81 FR 58049).

CAA section 188(c) states, in relevant part, that the Moderate area attainment date ''shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment.'' For the 2006 24-hour $PM_{2.5}$ NAAQS, effective December 14, 2009, the applicable Moderate area attainment date under section 188(c) for the FNSB NAA is as expeditiously as practicable, but no later than December 31, 2015. In SIP submissions to demonstrate impracticability, the state should document that its required control strategy in the plan represents the application of RACM/RACT to existing sources. Moderate areas that do not demonstrate timely attainment should adopt all reasonable control measures (*i.e.,* those measures that are technologically and economically feasible). 81 FR 58035. The impracticability demonstration should be a showing that the area cannot attain by the applicable date, notwithstanding implementation of all reasonable controls in the Moderate area attainment plan. 81 FR 58045.

2. Impracticability Demonstration in the FNSB Moderate Plan

The FNSB Moderate Plan includes a demonstration, based on air quality modeling and additional supporting analyses discussed in section II.D of this proposal, that attainment by the statutory Moderate area attainment date of December 31, 2015 was impracticable. Implementation of the selected control strategy resulted in a projected 2015 design value of 39.6 μmu;g/m^3 at the State Office Building, and Alaska's unmonitored area analysis shows that several other parts of the FNSB NAA may also violate the NAAQS in 2015. On November 22, 2016, and January 6, 2017, Alaska submitted a SIP revision supported by additional clarifying information that included the adoption of control measures that have been implemented since the initial submission of the FNSB Moderate Plan in December 2014. The control measures include a mandatory curtailment program for solid-fuel fired heaters, a requirement to use dry wood in wood-fired heaters, an opacity limit applicable to solid-fuel fired heating devices, and other measures that strengthened the overall control strategy. In the 2017 Clarification, Alaska provided a demonstration that included the additional emissions reductions from these control measures, which resulted in a projected 2015 future year design value of 37.8 μmu;g/m^3. Accordingly, Alaska demonstrated that attainment by the statutory Moderate area attainment date would still have been impracticable even if all control measures had been adopted earlier.

3. The EPA's Evaluation and Proposed Action: Impracticability Demonstration

We have evaluated the FNSB Moderate Plan's demonstration that it was impracticable for the area for attain by the December 31, 2015 statutory Moderate area attainment date, supporting air quality modeling, and control strategy analyses addressing the adoption of all reasonable measures. We are proposing to approve Alaska's demonstration that it was not practicable for the area to attain the 2006 NAAQS standard by December 31, 2015.

In addition to the information in the FNSB Moderate Plan and supplement, we have reviewed recent $PM_{2.5}$ monitoring data from the FNSB NAA. The data show that the area did not attain the $PM_{2.5}$ NAAQS by the December 31, 2015 attainment date. The State Office Building monitor, which is the original violating monitor in the FNSB NAA and was the basis of the FNSB Moderate Plan, had a 2013–2015 design value of 43 μmu;g/m^3.[19] In addition, the monitor at the North Pole Fire Station became a regulatory monitor in 2015, after Alaska's development and submission of the initial FNSB Moderate Plan. The North Pole Fire Station monitor has a 2013–2015 design value of 124 μmu;g/m^3. The EPA has therefore separately proposed to find that the FNSB NAA did not attain by the statutory Moderate area attainment date and reclassify the area from Moderate to Serious pursuant to CAA section 188(b)(2) (81 FR 91088, December 16, 2016). If the EPA finalizes the reclassification of the FNSB NAA from Moderate to Serious, Alaska will be required to submit a Serious area attainment plan by December 31, 2017. Because the North Pole Fire Station monitor is now a regulatory monitor in the FNSB NAA, Alaska and the EPA will address it in the development of the Serious area plan for the FNSB NAA.

[19] The 2013–2015 design value excludes exceedances during summer months that were identified as wildfire exceptional events and the EPA has approved excluding the data. (*See* section II.I of this proposal.)

F. Reasonable Further Progress and Quantitative Milestones

1. Requirements for RFP and QMs

CAA section 172(c)(2) requires nonattainment area plans to provide for RFP. In addition, CAA section 189(c) requires $PM_{2.5}$ nonattainment area SIPs to include QMs to be achieved every 3 years until the area is redesignated to attainment and which demonstrate RFP. CAA section 171(1) defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.'' Neither subpart 1 nor subpart 4 require that a set percentage of emissions reductions be achieved in any given year for purposes of satisfying the RFP requirement for $PM_{2.5}$ NAAQS.

The EPA has historically interpreted the requirement to be met by a state showing annual incremental emission reductions in its attainment plan sufficient to maintain generally linear progress toward attainment by the applicable deadline. 40 CFR 51.1012(a)(4); *see also* 59 FR 41998, 42015 (August 10, 1994). In some circumstances, the EPA has acknowledged that RFP may be better represented as step-wise progress as controls are implemented and achieve significant reductions over a relatively short period. The EPA's recent implementation rule for the $PM_{2.5}$ NAAQS has reiterated these requirements. An attainment plan for a $PM_{2.5}$ nonattainment area must include an RFP analysis that demonstrates that sources in the area will achieve such annual incremental reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors as are necessary to ensure attainment as expeditiously as practicable. 40 CFR 51.1012(a). The RFP analysis must include a schedule for implementation of the control measures and provide projected emissions from these measures for each applicable milestone year. *Id.* at 51.1012(a)(1)–(2). At the state's election, the RFP analysis may also identify ambient air quality targets for the milestone years at the design value monitor locations. *Id.* at 51.1012(a)(5).

Section 189(c) provides that attainment plans must include QMs that will be used to measure RFP every 3 years until redesignation. Thus, the EPA determines an area's compliance with RFP in conjunction with determining its compliance with the QM requirement. 40 CFR 51.1013(a) (requiring attainment plans to include specific QMs that will demonstrate RFP toward attainment). Because RFP is an annual emission reduction requirement and the QMs are to be achieved every 3 years, when a state demonstrates compliance with the QM requirement, it provides an objective evaluation of RFP that has been achieved during each of the relevant 3 years. *Id.* at 51.1013(a)(1)(ii). The EPA has historically interpreted the CAA to authorize a broad variety of QMs, so long as they provide a way to verify compliance with the RFP requirement. QMs are not required to take any particular form but they should consist of elements that allow progress to be quantified or measured objectively. 81 FR 58064. However, at a minimum, QMs for a Moderate area attainment plan must track progress in implementing control measures by each milestone date. Therefore, timely implementation of control measures comprising the RFP plan provides a means for satisfying the QM requirement. *Id.* The Act requires states to include RFP and QMs in attainment plans for all Moderate areas, even for areas that cannot practicably attain by the attainment date.

The CAA does not specify the starting point for counting the 3-year periods for QMs under CAA section 189(c). However, the EPA's longstanding interpretation of the CAA is that the first QM should fall 3 years after the latest date on which the state should have submitted the attainment plan. For the 2006 $PM_{2.5}$ NAAQS, the EPA set QMs to be achieved no later than the 3 years after December 31, 2014, and every 3 years thereafter until the QM date falls within 3 years after the applicable attainment date. 40 CFR 51.1013(a)(4). Accordingly, the first QM date for the FNSB NAA must be met no later than December 31, 2017 (3 years after December 31, 2014). Following reclassification of the FNSB NAA to Serious with a new applicable attainment date of December 31, 2019, the later QM of December 31, 2020 will apply, with additional QMs every 3 years thereafter as may be necessary for the Serious area plan in light of any extension of the applicable attainment date.

A state must submit a QM report to the EPA no later than 90 days after the QM date. 40 CFR 51.1013(b). The QM reports must contain: (1) A certification that the attainment plan control strategy is being implemented, (2) technical support to demonstrate that the QMs have been satisfied and how the emissions reductions achieved to date compare to those scheduled to meet RFP, (3) a discussion of whether the area will attain the 2006 $PM_{2.5}$ NAAQS by the projected attainment date.

2. RFP and QMs in the FNSB Moderate Plan

The RFP demonstration in the FNSB Moderate Plan addresses emissions of direct $PM_{2.5}$, NO_X, SO_2, and NH_3 and includes a projected emissions inventory for the 2017 QMs based on implementing the control strategy (*see* the FNSB Moderate Plan sections III.D.5.6 and III.D.5.8, the 2017 Clarification, and table 6 in section II.C, above). Alaska assessed the emissions reductions that would be achieved from the base year emissions inventory by 2017 from the control measures included in the control strategy. To determine whether the 2017 emissions projections were consistent with generally linear progress towards attainment, Alaska interpolated linearly between the 2015 projected emissions inventory for the FNSB NAA and the 2019 inventory that Alaska based on projected attainment for the FNSB NAA by that year, *i.e.,* the tenth year following designation. The table below summarizes the 2017 QMs and RFP demonstration in the FNSB Moderate Plan.

TABLE 7—FNSB NAA RFP DEMONSTRATION AND QMS

[Tons per day]

Emissions projections	$PM_{2.5}$	NO_X	SO_2	NH_3
2017 Linear Progress QMs	3.96	18.97	13.00	0.200
2017 Projected Emissions	3.91	18.95	12.41	0.188

Alaska included an inventory for 2017 and motor vehicle emissions budgets, which are discussed in section II.H below. The RFP analysis is based on winter episode average-season-day emissions for the FNSB NAA and actual

emissions for stationary point sources. The RFP analysis projected that emissions of direct $PM_{2.5}$ and NO_X would decline from 2015 to 2017. The SO_2 and NH_3 emissions were projected to slightly increase, due in large part to implementation of the control strategy which places greater reliance on gas and oil heating in place of wood and other solid fuels to reduce overall emissions and concentrations of $PM_{2.5}$ in the FNSB NAA. The EPA has acknowledged that in some circumstances a state could meet the RFP requirement even when emissions of one or more plan precursors are not decreasing, provided that the relative air quality impacts of the emissions reductions of direct $PM_{2.5}$ and aggregate $PM_{2.5}$ plan precursors have generally linear reductions towards what is needed for expeditious attainment in the area. In such a circumstance the state would demonstrate that even when one or more plan precursor is not decreasing, the emissions reductions of direct $PM_{2.5}$ and remaining $PM_{2.5}$ plan precursors are the dominant factors in reducing ambient $PM_{2.5}$ concentrations and therefore adequate to demonstrate RFP. 81 FR 58057. Alaska's RFP analysis projected that implementation of the control strategy would decrease emissions of direct $PM_{2.5}$ and NO_X and slightly increase emissions of SO_2 and NH_3 emissions, with aggregate emissions reductions of direct $PM_{2.5}$ and all precursors lower than linear progress.

As previously noted, on November 22, 2016, and January 6, 2017, Alaska provided a supplementary submission and clarifying information to the EPA that included implementation of control measures for area sources in 2015. The control measures include a mandatory curtailment program for solid-fuel heaters, a requirement to use only dry wood in wood heaters, an opacity limit for solid-fuel fired heating devices, and other measures that strengthened the control strategy. Alaska updated the RFP analysis to include the implementation of these new measures.

3. The EPA's Evaluation and Proposed Action: RFP and QMs

The FNSB Moderate Plan, including the 2016 supplement and 2017 Clarification, demonstrates that the control strategy, including all reasonable controls, has been implemented and identifies projected emissions levels, in a 2017 emissions inventory, that reflect full implementation of the control strategy for the area. In an area that cannot practicably attain the $PM_{2.5}$ NAAQS by the applicable Moderate area attainment date, we believe it is reasonable to find that full implementation of a control strategy that satisfies the Moderate area control requirements (RACM/RACT and additional reasonable measures) represents RFP toward attainment. We propose, therefore, to approve the RFP demonstration for direct $PM_{2.5}$, NO_X, SO_2, and NH_3 as meeting the requirements of CAA section 172(c)(2).

In evaluating whether the submitted attainment plan meets the RFP and related QM requirements, we are relying in part on the FNSB Moderate Plan's analysis of the implementation of control measures adopted before 2015 and more recently in 2016. As previously noted, if the FNSB NAA is reclassified from a Moderate to Serious nonattainment area, as proposed, the area will be subject to Serious area plan requirements and Alaska will need to reevaluate and strengthen its attainment plan control strategy, and provide a new attainment demonstration and revised RFP demonstration and QMs based on the Serious area control strategy.

The EPA proposes to approve the FNSB Moderate Plan as meeting both the RFP and QM requirements. The FNSB Moderate Plan provides sufficient data and analyses that demonstrate emissions reductions that provide RFP toward attainment in 2017, and the QM for 2017 provides an objective way for the EPA to verify that Alaska has met the RFP requirements for the relevant 3 years of the attainment plan for this area.

On January 6, 2017, Alaska submitted a QM report (2017 QM Report) to the EPA certifying that the 2017 QMs for the FNSB NAA have been achieved.[20] The EPA has evaluated the 2017 QM Report and determines that, it adequately meets the requirements of 40 CFR 51.1013(b). The 2017 QM Report includes a certification from the Governor's designee and an appropriate demonstration that the control strategy has been fully implemented and that the emissions reductions achieved are consistent with the 2017 QMs that demonstrate RFP at the State Office Building monitor. In the 2017 QM Report, Alaska acknowledges that, consistent with the impracticability demonstration in the FNSB Moderate Plan, the FNSB NAA did not attain the $PM_{2.5}$ NAAQS by the moderate area attainment date of December 31, 2015. Based on our review of Alaska's 2017 QM Report, the EPA agrees that the FNSB NAA has achieved the RFP emissions goals and the 2017 QMs in the FNSB Moderate Plan for direct $PM_{2.5}$, NO_X, SO_2, and NH_3.

[20] Alaska's 2017 quantitative milestone report is available in the docket for this action.

G. Contingency Measures

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), $PM_{2.5}$ plans must include contingency measures to be implemented if an area fails to meet RFP or fails to attain the $PM_{2.5}$ standards by the applicable attainment date. Under subpart 4, however, the EPA interprets section 172(c)(9) in light of the specific requirements for particulate matter nonattainment areas. CAA section 189(b)(1)(A) differentiates between Moderate area attainment plans that provide for timely attainment by no later than the sixth calendar year after designation and those that demonstrate that attainment by that date is impracticable. Where the SIP submission includes a demonstration that attainment by the applicable attainment date is impracticable, the EPA interprets CAA section 172(c)(9) not to require contingency measures that would take effect upon failure to attain. 81 FR 58067. In an attainment plan submission that meets the impracticability demonstration requirement, the state need only submit contingency measures to be implemented if a state fails to meet any RFP requirement of the plan, any QM in the plan, or to submit a QM report, as provided in 40 CFR 51.1014(a)(1)–(3).[21]

The purpose of contingency measures is to continue progress in reducing emissions during the period while a state is revising its SIP to address a failure, such as a failure to meet a QM requirement or failure to attain. The principal considerations for evaluating contingency measures are:

- Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the NAAQS by its attainment date.
- The SIP must contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without further action by the state or by the EPA. In general, we expect all actions needed to affect full implementation of the

[21] The EPA does not interpret the requirement for failure-to-attain contingency measures to apply to Moderate $PM_{2.5}$ nonattainment areas that cannot practicably attain the NAAQS by the statutory attainment date. Rather, the EPA believes it is appropriate for the state to identify and adopt attainment contingency measures as part of the Serious area attainment plan that it will develop once the EPA reclassifies the area. 81 FR 58067.

measures to occur within 60 days after the EPA notifies the state of a failure.

- The contingency measures shall consist of control measures that are not otherwise included in the control strategy or that achieve emissions reductions not otherwise relied upon in the control strategy for the area.
- The measures should provide for emissions reductions equivalent to approximately one year of reductions needed for RFP calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year. 81 FR 58066.

2. Contingency Measures in the FNSB Moderate Plan

Alaska identified two contingency measures in the FNSB Moderate Plan in section III.D.5.10. In accordance with basic requirements for valid contingency measures, these two measures are not required to meet other attainment plan requirements and are not relied on in the control strategy. The first contingency measure requires the replacement of wood heating devices upon sale or lease of property if the existing devices do not meet specific emissions requirements. The second contingency measure is a mandatory enhanced dry wood compliance program that requires commercial wood sellers to register with the State and to disclose moisture content information to consumers at the time of wood sale and delivery.

The FNSB Moderate Plan contingency measures have been fully adopted into Alaska State Code (18 AAC 50.076 and 50.077). In accordance with basic requirements for valid contingency measures, they will go into effect with minimal further action by the state or the EPA in response to a triggering event; in this case the measures adopted by Alaska will be implemented within 60 days of the EPA making a finding that the FNSB NAA failed to attain the NAAQS and reclassifying the area from a Moderate to a Serious nonattainment area.

3. The EPA's Evaluation and Proposed Action: Contingency Measures

The EPA acknowledges that Alaska developed, adopted, and submitted the FNSB Moderate Plan prior to the EPA's publication of the proposed $PM_{2.5}$ Implementation Rule and interpretation that the requirement for contingency measures for failure to attain does not apply to a Moderate area that a state demonstrates cannot practicably attain by the statutory attainment date, but rather contingency measures for failure to meet RFP or QMs apply to such areas. *See* CAA 172(c)(9); 80 FR 15392, March 23, 2015; and 81 FR 58067. Hence, Alaska's FNSB Moderate Plan submission includes contingency measures that would take effect at the first possible triggering event—in this case the failure of the FNSB NAA to attain by the applicable Moderate area statutory attainment date, December 31, 2015. The EPA believes that had Alaska been aware of the interpretation provided in the proposed (and final) $PM_{2.5}$ Implementation Rule at the time it developed and submitted the FNSB Moderate Plan, it would have provided contingency measures for failure to meet RFP, meet any QM, or submit a QM report on time. 40 CFR 51.1014.

Although the FNSB Moderate Plan did not include contingency measures for failure to meet RFP, the EPA is in the unusual position of reviewing the contingency measure requirement at a later point in time than would normally occur (*i.e.,* after the applicable attainment date and Alaska's submission of the 2017 QM Report), when it is possible to determine whether the area has, in fact, achieved RFP, up to and including the 2017 QM (*see* section II.F of this proposal for discussion of Alaska's 2017 QM Report). We are proposing to find that the FNSB Moderate Plan is approvable and that the RFP contingency measures for the 2017 milestone year is moot as applied to the FNSB NAA given the specific facts of the situation, including that the area achieved its 2017 QM emission reductions.

As noted, the EPA has proposed (consistent with the impracticability demonstration in the FNSB Moderate Plan) to reclassify the area to Serious. Upon reclassification of this area to Serious nonattainment, Alaska will be required to submit a Serious area plan for this area that must include contingency measures for purposes of both failure to meet RFP and failure to attain by the Serious area attainment date, consistent with the requirements of the CAA and the $PM_{2.5}$ Implementation Rule.

In addition, Alaska included in the FNSB Moderate Plan contingency measures that are triggered by failure to attain. Although not required, as discussed above, Alaska can elect to include these control measures pursuant to its authority under CAA section 116. Because contingency measures for failure to attain are not required in this type of attainment plan, the EPA is not proposing to approve these control measures as contingency measures. Instead, the EPA is proposing to approve them as SIP strengthening measures because they will achieve additional emission reductions needed in this area.

Approving these control measures will help to assure that further reductions of emissions occur during the period in which Alaska is developing the Serious area attainment plan for this area. In developing the Serious area attainment plan for this area, Alaska will be required submit a SIP revision that will ensure the area achieves the next QM of December 31, 2020 (and additional QMs every three years thereafter as may be necessary). As discussed previously, the analyses in the Serious area attainment plan will be based on the highest violating regulatory monitor which is currently the monitor at the North Pole Fire Station. Thus, the 2020 QMs will be based on meeting RFP at the North Pole Fire Station monitor.

The EPA is therefore proposing to approve, as SIP strengthening measures, the requirement to replace wood heating devices upon sale or lease of property when existing devices do not meet specific emissions requirements and the mandatory enhanced dry wood compliance program. As discussed previously, the EPA has proposed to reclassify the FNSB NAA to Serious and the control measures are set to take effect upon reclassification of the FNSB NAA from Moderate to Serious.

H. Motor Vehicle Emissions Budgets

1. Requirements for Motor Vehicle Emissions Budgets

CAA section 176(c) requires Federal actions in nonattainment and maintenance areas to conform to the goals of the SIP to eliminate or reduce the severity and number of violations of the NAAQS and achieve expeditious attainment of the standards. Conformity to the goals of the SIP means that such actions will not (1) cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or interim milestones.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR 51.390 and part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, the EPA, FHWA and FTA to demonstrate that an area's long-range transportation plans (''transportation plans'') and transportation improvement program (TIP) conform to applicable SIPs. This demonstration is typically made by showing that estimated

emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (''budgets'') contained in all control strategy plans. An attainment plan for the $PM_{2.5}$ NAAQS should include budgets for the attainment year and each required QM year, as appropriate. Budgets are generally established for specific years and specific pollutants or precursors and must reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations (40 CFR 93.118(e)(4)(v)).

Attainment plans for $PM_{2.5}$ NAAQS should identify motor vehicle emission budgets for each QM year and the attainment year for direct $PM_{2.5}$ and NO_X (*See* 40 CFR 93.102(b)(2)(iv)), and for VOCs, SO_2, and NH_3, if, during the SIP development process, transportation-related emissions of these precursors have been found to contribute significantly to the $PM_{2.5}$ nonattainment problem in the area at issue (40 CFR 93.102(b)(2)(v)). All direct $PM_{2.5}$ emission budgets in an attainment plan should include direct $PM_{2.5}$ motor vehicle emissions from tailpipe, brake wear, and tire wear. A state must also consider whether re-entrained paved and unpaved road dust are significant contributors and should be included in the direct $PM_{2.5}$ budget. *See* 40 CFR 93.102(b) and 93.122(f) and the conformity rule preamble at 69 FR 40004, 40031–40036 (July 1, 2004).[22]

1. Motor Vehicle Emissions Budgets in the FNSB Moderate Plan

In section III.D.5.6, the FNSB Moderate Plan provides budgets for direct $PM_{2.5}$ and NO_X for 2017, the QM year for RFP. The budgets were calculated using the MOVES2010a vehicle emissions model, which was the latest onroad mobile sources emissions model available at the time Alaska started developing the attainment plan inventory. Alaska used local fleet and fuel inputs and the Fairbanks Metropolitan Area Transportation System travel demand model to generate local vehicle travel activity estimates over the six-month nonattainment season (October through March). The average winter day emissions, as detailed in section II.A of this proposal, were used by Alaska to set the motor vehicle emissions budgets. Exceedances of the 2006 24-hour $PM_{2.5}$ NAAQS in the FNSB NAA occur almost exclusively during the winter months. Alaska executed MOVES2010a with locally developed inputs representative of wintertime calendar year 2017 conditions. Table 8 summarizes the regional average winter day onroad vehicle $PM_{2.5}$ and NO_X emissions that represent the applicable motor vehicle emissions budgets for 2017 including the plug-in block heater adjustments to starting exhaust emissions for light-duty gasoline vehicles. Alaska estimated that the contribution of onroad vehicles to total emissions from all sources comprises 8.7 percent of direct $PM_{2.5}$ emissions and 16.7 percent of NO_X emissions.

TABLE 8—MOTOR VEHICLE EMISSIONS BUDGETS FOR FNSB

[Tons per day]

Calendar year	$PM_{2.5}$	NO_X
2017	0.33	2.13

2. The EPA's Conclusion and Proposed Action: Motor Vehicle Emissions Budgets

We have evaluated the budgets developed by Alaska against our adequacy criteria in 40 CFR 93.118(e)(4) as part of our review of the approvability of the budgets. The EPA finds that they are consistent with meeting RFP requirements toward attainment of the 2006 24-hour $PM_{2.5}$ NAAQS in this area and meet the criteria for adequacy and approval. The EPA proposes to approve Alaska's motor vehicle emissions budgets in table 8 for 2017 for direct $PM_{2.5}$ and NO_X for the FNSB NAA.

I. FNSB NAA Exceptional Event Demonstrations and Concurrences

The CAA allows for the exclusion of air quality monitoring data from design value calculations when there are exceedances caused by events, such as wildfires, that meet the criteria for an exceptional event identified in the EPA's implementing regulations, the Exceptional Events Rule at 40 CFR 50.1, 50.14 and 51.930. Emissions from wildfires influenced $PM_{2.5}$ concentrations recorded in the FNSB NAA in 2009, 2010, and 2013. Alaska submitted three exceptional event demonstrations for wildfires for which the EPA concurred on as follows:

TABLE 9—EPA CONCURRED EXCEPTIONAL EVENTS DAYS THAT AFFECTED DATA IN THE FNSB NAA

Day(s) affected by wildfire exceptional events	Affected monitor(s)	EPA concurrence
July 6–15–30, 2009	State Office Building	December 19, 2012.
August 2–5–8, 2009		
July 13, 2010	State Office Building	March 11, 2014.
June 27, 2013	State Office Building, National Core (NCore)	November 9, 2016.

The 2009 and 2010 events had regulatory significance for purposes of the modeling and impracticability demonstration in the FNSB Moderate Plan. The 2013 event has regulatory significance for purposes of the Serious area plan submittal in development. Further details on Alaska's analyses and the EPA's concurrences can be found in the docket for this regulatory action. The EPA has concurred with the Alaska's request to exclude event-influenced data for the dates listed above.[23] As such, the event-influenced data have been removed from the data set used for regulatory purposes and, for this proposed action, the EPA will rely on the calculated values that exclude the event-influenced data.

III. Proposed Action

Under CAA section 110(k), the EPA is proposing to approve the FNSB Moderate Plan for the $PM_{2.5}$ NAAQS. Specifically, the FNSB Moderate Plan meets the substantive statutory and regulatory requirements for base year and projected emissions inventories, precursor demonstrations, analysis and imposition of RACM/RACT level

[22] For further information on transportation conformity rulemakings, policy guidance and outreach materials, *see* the EPA's Web site at *http://www3.epa.gov/otaq/stateresources/transconf/policy.htm.*

[23] The EPA concurrence letters for exceptional events are included in the docket for this action.

emission controls, RFP, and QMs. In addition, the EPA is proposing to approve the 2017 motor vehicle emissions budgets as shown in table 8 above because they are derived from an approvable RFP demonstration and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A.

Accordingly, the EPA is proposing to determine that the FNSB Moderate Plan, for the FNSB NAA for the 2006 24-hour $PM_{2.5}$ NAAQS, meets applicable requirements for purposes of approval under section 110(k) of the CAA. The EPA also proposes to approve state and local rules submitted in the FNSB Moderate Plan and the exceptional event demonstrations as discussed in this action.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference state and local regulations for solid-fuel fired heaters and open burning. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 10 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: January 18, 2017.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2017–02193 Filed 2–1–17; 8:45 am]

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Notices

Federal Register
Vol. 82, No. 21
Thursday, February 2, 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 COMMERCE

Foreign-Trade Zones Board

[B–67–2016]

Foreign-Trade Zone (FTZ) 82—Mobile, Alabama; Authorization of Limited Production Activity; Airbus Americas, Inc. (Commercial Passenger Jet Aircraft Production); Mobile, Alabama

On September 29, 2016, the City of Mobile, Alabama, grantee of FTZ 82, submitted a notification of proposed production activity to the FTZ Board on behalf of Airbus Americas, Inc., within Site 1, in Mobile, Alabama.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 69780–69782, October 7, 2016). The FTZ Board has determined that further review of part of the proposed activity is warranted at this time. The production activity described in the notification is authorized on a limited basis, subject to the FTZ Act and the Board's regulations, including Section 400.14, and further subject to a restriction requiring that the following foreign-status materials/components be admitted to the zone in privileged foreign status (19 CFR 146.41): Pre-Preg NOMEX rigid flight accessory cases (HTSUS 4202.12); leather cases and pouches for storing equipment (HTSUS 4202.91); textile pouches for storing equipment (HTSUS 4202.92); leather pockets (HTSUS 4205.00); twill tape (HTSUS 5208.39); synthetic sowing yarn (HTSUS 5401.10); water absorbent felt (HTSUS 5602.10); synthetic braided cordage (HTSUS 5607.50); synthetic emergency escape rope and retaining cords (HTSUS 5609.00); synthetic fireproof gloves (HTSUS 6116.93); finished aircraft curtain and class divider assemblies (HTSUS 6303.92); and, life vests (HTSUS 6307.20).

Dated: January 26, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–02171 Filed 2–1–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–858]

Certain Softwood Lumber Products From Canada: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

DATES: Effective February 2, 2017.

FOR FURTHER INFORMATION CONTACT: Toby Vandall at (202) 482–1664, or Peter Zukowski at (202) 482–0189, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2016, the Department of Commerce (the Department) initiated a countervailing duty investigation on certain softwood lumber products from Canada.[1] Currently, the preliminary determination is due no later than February 21, 2017.[2]

Postponement of the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, section 703(c)(1) of the Act permits the Department to postpone the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation if: (A) The petitioner[3] makes a timely request for a postponement; or (B) the Department concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. The Department will grant the request unless it finds compelling reasons to deny the request.

On January 26, 2017, the petitioner submitted a timely request that we postpone the preliminary CVD determination.[4] The petitioner stated that it requests postponement ''in light of the number of programs under investigation, the number of company and government respondents, and the expected complexity of the issues.''[5] In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and the Department finds no compelling reason to deny the request. Therefore, pursuant to section 703(c)(1)(A) of the Act, we are extending the due date for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* to April 24, 2017. Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(l).

[1] *See Certain Softwood Lumber Products from Canada: Initiation of Countervailing Duty Investigation,* 81 FR 93897 (December 22, 2016).

[2] The actual deadline is February 18, 2017, which is a Saturday. The Department's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of* ''*Next Business Day*'' *Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[3] In this investigation, the petitioner is the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations.

[4] *See* Letter from the petitioner, ''Certain Softwood Lumber Products from Canada: Request for Extension of the Preliminary Determination,'' (January 26, 2017).

[5] *Id.*

Dated: January 27, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–02207 Filed 2–1–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee: Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Thursday February 16, 2017, from 11:00 a.m. to 12:00 p.m. Eastern Standard Time (EST). The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. EST on Friday, February 10, 2017.

ADDRESSES: The meeting will be held via conference call. The call-in number and passcode will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 20010, 1401 Constitution Ave. NW., Washington, DC 20230. (Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 20010, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the Thursday, February 16, 2017 CINTAC meeting is as follows: Discussion on activities related to the U.S. Department of Commerce's Civil Nuclear Trade Initiative.

Public attendance is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. Jonathan Chesebro at the contact information above by 5:00 p.m. EST on Friday, February 10, 2017 in order to pre-register. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may not be possible to fill.

A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 20 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EST on Friday, February 10, 2017. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 20010, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on Friday, February 10, 2017. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: January 27, 2017.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2017–02212 Filed 2–1–17; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–869]

Certain New Pneumatic Off-the-Road Tires From India: Affirmative Amended Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is amending its final negative determination of sales at less-than-fair-value (LTFV) with respect to certain new pneumatic off-the-road tires (OTR tires) from India to correct ministerial errors in the calculation of the weighted-average dumping margin of Alliance Tires Private Limited (ATC), one of the mandatory respondents in the investigation. Correction of these errors results in a revised margin for ATC that is above *de minimis,* and, thus, also results in an affirmative determination of sales at LTFV. The Department is also assigning a new ''All-Others'' rate.

DATES: Effective February 2, 2017.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Trisha Tran, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412, or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2017, the Department publicly announced its *Final Determination* [1] in the LTFV investigation on OTR tires from India. On January 9, 2017, Petitioners [2] alleged

[1] *See Certain New Pneumatic Off-the-Road Tires from India: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances,* 82 FR 4848 (January 17, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum (Final IDM).

[2] Petitioners are Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber,

that the Department made certain ministerial errors related to the application of partial adverse facts available (AFA) in the *Final Determination*.[3] On January 17, 2017, ATC submitted its rebuttal comments.[4]

Based on an analysis of the allegations submitted by Petitioners, the Department determined that it did not make ministerial errors with respect to the application of partial AFA, as defined by section 735(e) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(f).[5] However, in the context of evaluating Petitioner's allegation, the Department determined that it made ministerial errors within the meaning of section 735(e) of the Act and 19 CFR 351.224(f) with respect to ATC's freight expenses, home market credit expenses and U.S. indirect selling expenses.[6] Accordingly, the Department revised the margin calculation for ATC, and assigned a new ''All-Others'' rate, as discussed below.

Scope of the Investigation

The products covered by this investigation are OTR tires from India. For a complete description of the scope of the investigation, *see* Appendix I of this notice.

Ministerial Errors

Section 735(e) of the Act, and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial.'' [7]

The Department finds that the purported errors alleged by Petitioners' do not constitute ministerial errors within the meaning of 19 CFR 351.224(f).[8] Specifically, the Department did not state that it intended to determine, as partial AFA, that 66 percent of the value of ATC's U.S. sales passed the Cohen's *d* test in order to apply the average-to-transaction methodology.[9] The Department intentionally applied partial AFA to the standard average-to-average differential pricing methodology in the final margin program because 65.33 percent of the value of ATC's U.S. sales passed the Cohen's *d* test, and the mixed methodology margin did not result in a meaningful difference between the standard and mixed methodology margins.[10] Moreover, the Department did not intend, as Petitioners allege, to apply partial AFA to all three methodologies, prior to determining whether there was a meaningful difference.[11]

Additionally, in reviewing the record, the Department found that: (1) The Department inadvertently omitted additional fields reported by ATC as part of its minor corrections that should have been part of the final margin calculation; (2) ATC did not revise the home market credit expenses to include the correct payment dates for the particular sales identified as minor corrections at the home market sales verification; and (3) the Department inadvertently included the costs associated with the unreported sample U.S. sales in the indirect selling expenses. These are unintentional errors, similar to the errors identified as ministerial errors in the regulations, and, therefore, constitute ministerial errors within the meaning of 19 CFR 351.224(f). Therefore, the Department corrected these errors in the final margin program by: (1) Including the two additional freight expense fields (*i.e.,* OTHFRTU, PICKUP_CHGU); (2) revising the home market credit expenses to include the correct payment dates for the particular sales identified at the home market sales verification; and (3) revising the indirect selling expenses to exclude the costs associated with the free sample U.S. sales used in the application of partial AFA to those U.S. sales. Based on the above analysis, ATC's weighted-average dumping margin increased from zero percent to 3.67 percent.

Negative Determination of Critical Circumstances

In the *Final Determination,* the Department considered the Petitioners' critical circumstances allegation with respect to producers and exporters subject to the all others rate and determined that the finding for whether critical circumstances exist with respect to such producers and exporters was moot because the antidumping duty margins for ATC and Balkrishna Industries Limited (BKT), the other mandatory respondent, were zero.[12] ATC's weighted-average dumping margin increased from zero percent to 3.67 percent as a result of corrections to ministerial errors, which has resulted in a similar increase in the ''All-Others'' rate. Accordingly, we are addressing whether critical circumstances exist with respect to the ''All-Others'' rate.

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist in antidumping duty investigations if: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported, knew or should have known that the exporter was selling the subject merchandise at LTFV and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine whether there is a history of dumping and material injury, the Department generally considers previous antidumping duty orders on subject merchandise from the country in question in the United States or current orders imposed by other countries with regard to imports of the same merchandise.[13] Because there is no previous antidumping duty order on OTR tires from India or record evidence of current orders imposed by other countries with regard to imports of the same merchandise, the Department finds that there is no history of injurious dumping of OTR tires form India pursuant to section 735(a)(3)(A)(i) of the Act.

Furthermore, the Department normally considers dumping margins of 25 percent or more for export price sales

Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (the USW).

[3] *See* Letter from Petitioners, ''Certain New Pneumatic Off-the-Road Tires from India: Petitioners' Ministerial Error Comments regarding ATC,'' dated January 9, 2017 (Petitioners' Comments).

[4] *See* Letter from ATC, ''Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Reply to Petitioners' Ministerial Error Comments,'' dated January 17, 2017 (ATC's Rebuttal Comments).

[5] *See* Memorandum, ''Antidumping Duty Investigation on Certain New Pneumatic Off-the-Road Tires from India: Allegation of Ministerial Errors in the Final Determination,'' dated January 26, 2017 and hereby adopted by this notice (Ministerial Error Memorandum).

[6] *Id.*

[7] *See* section 735(e) of the Act.

[8] *See* Ministerial Error Memorandum.

[9] *Id.; see also,* Memorandum, ''Antidumping Duty Investigation of Certain New Pneumatic Off-the-Road Tires (OTR) from India: Analysis of the Final Negative Determination Margin Calculation for ATC Tires Private Limited,'' dated January 3, 2017 (ATC's Final Analysis Memorandum) at 5–6 and Attachment 2.

[10] *See* Final IDM at 19.

[11] *Id.* at 3–4.

[12] *See Final Determination,* 82 FR at 4849.

[13] *See Certain Oil Country Tubular Goods from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination,* 74 FR 59117, 59120 (November 17, 2009); unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010).

and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.[14] The estimated weighted-average dumping margins in this investigation do not exceed the threshold sufficient to impute knowledge of dumping (*i.e.,* 25 percent for EP or 15 percent for CEP sales). Therefore, the Department finds that there is an insufficient basis to find that importers knew nor should have known that exporters in India were selling subject merchandise at LTFV.[15] As such, we find that critical circumstances do not exist.

Amended Final Determination

As a result of correcting the ministerial errors, we determine that the weighted-average dumping margins and cash deposit rates are as follows:

Exporter/ producer	Weighted-average dumping margins (percent)	Cash deposit rate adjusted for subsidy offset (percent)
ATC Tires Private Ltd	3.67	0.00
All-Others	3.67	0.00

As stated above, the weighted-average dumping margin for BKT is unchanged from the *Final Determination* (*i.e.,* 0.00 percent).

''All-Others'' Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''All Others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. As a result of our corrections to ATC's final weighted-average margin, the only rate that is not *de minimis* in this investigation is the rate calculated for ATC. Consequently, in accordance with section 735(c)(5)(A) of the Act, we have assigned the rate calculated for ATC as the ''All-Others'' rate, as indicated in the ''Amended Final Determination Margins'' section above.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation on all appropriate entries of OTR tires from India, except as noted below, which were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Additionally, because the weighted-average dumping margin for BKT in the *Final Determination* (*i.e.,* 0.00 percent) is unchanged, the Department is not directing CBP to suspend liquidation of entries of OTR tires from India produced and exported by this entity. The instructions suspending liquidation will remain in effect until further notice.

The Department will also instruct CBP to require cash deposits for suspended entries equal to the amounts as indicated above, which are adjusted for certain countervailable subsidies, where appropriate. The all-others rate applies to all producers or exporters not specifically listed. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from India have been adjusted, as appropriate, for export subsidies found in the final determination of the companion countervailing duty investigation of this merchandise imported from India.[16]

U.S. International Trade Commission

In accordance with section 735(d) of the Act, we notified the U.S. International Trade Commission (ITC) of the *Final Determination* and our amended final determination. As the preliminary determination was negative and the amended final determination is affirmative, in accordance with section 735(b)(3) of the Act, the ITC will determine within 75 days of the affirmative amended final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury exists, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all appropriate imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This amended final determination is published in accordance with section 735(e) of the Act and 19 CFR 351.224(e).

Dated: January 30, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–02325 Filed 2–1–17; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico,* 77 FR 17422, 17425 (March 26, 2012).

[15] *See Certain Oil Country Tubular Goods from the Republic of Korea: Negative Preliminary Determination of Sales at Less than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination,* 79 FR 10480 (February 25, 2014), unchanged in *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less than Fair Value, Negative Final Determination of Critical Circumstances,* 79 FR 41983 (July 18, 2014).

[16] *See Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 82 FR 2946 (January 10, 2017); *see also* section 772(c)(1)(C) of the Act.

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: Atlantic Mackerel, Squid and Butterfish Amendment 14 Data Collection.

OMB Control Number: 0648–0679.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 426.

Average Hours Per Response: Vessel trip reports, 5 minutes; VMS activity declarations, 5 minutes; released catch affidavit form, 5 minutes observer pre-trip notification of trip, 5 minutes; trip cancellation, 1 minute.

Burden Hours: 3,385.

Needs and Uses: This request is for extension of a current information collection. Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to NOAA's National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect information from users of the resources.

This collection requires vessel trip reports (VTRs) to be submitted weekly

for all mackerel, squid, and butterfish permit holders. In addition, all limited access mackerel and longfin squid/butterfish moratorium permit holders must maintain a VMS unit on their vessels and declare intent to target Atlantic mackerel or longfin squid and submit daily catch reports via VMS. They must also submit daily catch reports via VMS. Vessels that land over 20,000 lb of mackerel must notify NMFS Office of Law Enforcement (OLE) via VMS of the time and place of offloading at least 6 hours prior to crossing the VMS demarcation line on their return trip to port, or if the vessel does not fish seaward of the VMS demarcation line, at least 6 hours prior to landing.

This collection also requires limited access mackerel and longfin squid/butterfish moratorium permit holders to bring all catch aboard the vessel and make it available for sampling by an observer. If catch is not made available to an observer before discard, that catch is defined as slippage, and the vessel operator must complete a ''Released Catch Affidavit'' form within 48 hours of the end of the fishing trip which details why catch was slipped, estimates the quantity and species composition of the slipped catch, and records the time and location of the slipped catch.

Finally, this collection requires any vessel with a limited access mackerel permit intending to land over 20,000 lbs of mackerel to contact NMFS at least 48 hours in advance of a fishing trip to request an observer. Vessels currently contact NMFS via phone, and selection notices or waivers are issued by NMFS via VMS. If service providers are unable to provide coverage, an owner, operator, or vessel manager may request a waiver by calling the Northeast Fisheries Observer Program.

Affected Public: Business or other for-profit organizations.

Frequency: Weekly, daily and on occasion.

Respondent's Obligation: Mandatory.

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 27, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–02162 Filed 2–1–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF165

Fisheries of the Gulf of Mexico and the South Atlantic; Southeast Data, Assessment and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 48 Data Workshop for Southeastern U.S. black grouper.

SUMMARY: The SEDAR 48 assessment of Southeastern U.S. black grouper will consist of a Data Workshop; an assessment workshop and series of Assessment webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 48 Data Workshop will be held from 9 a.m. on March 15, 2017 until 3 p.m. on March 17, 2017; the Assessment Workshop and webinars and Review Workshop dates and times will publish in a subsequent issue in the **Federal Register**.

ADDRESSES:

Meeting address: The SEDAR 48 Data Workshop will be held at the Hilton St. Petersburg Bayfront, 333 1st Street, Saint Petersburg, FL 33701; telephone: (727) 894–5000.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing workshops and webinars; and (3) Review Workshop. The product of the Data Workshop is a data report, which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report, which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Data Workshop agenda are as follows:

1. An assessment data set and associated documentation will be developed.

2. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance, as specified in the Terms of Reference for the workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 30, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–02194 Filed 2–1–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF172

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Electronic Monitoring Workgroup (EMWG) will hold a public meeting on March 28, 2017 through March 29, 2017.

DATES: The meeting will be held on Tuesday, March 28, 2017, from 8 a.m. to 5 p.m. and Wednesday, March 29, 2017, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Harbor Room at The Best Western Kodiak Inn, 236 Rezanof Drive, Kodiak, AK 99615. The meeting will be available by teleconference at: (907) 271–2896.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday March 28, 2017 Through Wednesday March 29, 2017

The agenda will include: (a) Budget Planning for 2018; (b) Review proposed rule for EM Implementation; (c) Preparation for 2019 contract; (d) Draft 2016 cost report and e) scheduling and other business. The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: January 30, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–02195 Filed 2–1–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF183

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Endangered Species Workgroup will hold a meeting, which is open to the public. Members of the public can participate: in person; via teleconference; and/or through ''Go To Meeting.''

DATES: The meeting will begin at 9 a.m. on Wednesday, February 15, 2017 and again at 9 a.m. on Thursday, February 16 and continue until business is finished on each day.

ADDRESSES: The meeting will be held at the Regional Administrator's Conference Room, Building 1, National Oceanic and Atmospheric Administration, Western Regional Center, 7600 Sand Point Way NE., Seattle, WA 98115–6349, telephone: (206)–526–6150. Members of the public who wish to attend the meeting in person must contact Mr. Kevin Duffy; email: *kevin.duffy@noaa.gov;* phone: (206) 526–4743, at least one week prior to the meeting to arrange entrance to this NOAA facility.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council, at (503) 820–2422; toll-free 1–866–806–7204.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review recent information on take of species listed under the Endangered Species Act (ESA) in the Pacific Coast groundfish fishery (other than salmonids) and provide recommendations to the Pacific Council on any additional mitigation measures needed, to meet the requirements of the ESA, as implemented through the terms and conditions in the most recent biological opinion for the fishery.

Members of the public can participate via GoToMeeting and/or via teleconference. For GoToMeeting access, please join my GoToMeeting: *https://global.gotomeeting.com/join/786288157.* Please note the teleconference line for this meeting includes a different phone number and participant pass code for each day.

For Wednesday, February 15, the Phone number is: 1–888–790–6085.

Participant Passcode: 1730793#.

For Thursday, February 16, the Phone number is: 1–888–283–0166.

Participant Passcode: 4432591#.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2425 at least 5 days prior to the meeting date.

Dated: January 30, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–02196 Filed 2–1–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2017–OS–0006]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Rescindment of a system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Department of Defense proposes to delete a system of records, DGC 20, DoD Presidential Appointee Vetting File, last published at 65 FR 75246 on December 1, 2000. This system of records was

originally created to facilitate the White House Presidential Appointee vetting process by assisting potential nominees as they completed the vetting documents.

Based on a recent review of DGC 20, DoD Presidential Appointee Vetting File, it was determined that this system of records is now appropriately covered under and is maintained in accordance with the government-wide Office of Government Ethics system of records notice OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (December 9, 2013, 78 FR 73863). Accordingly, DGC 20 is duplicative and can be deleted.

DATES: Comments will be accepted on or before March 6, 2017. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties and Transparency Division Web site at *http://dpcld.defense.gov/.*

The Office of the Secretary proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Based on a recent review of DGC 20, DoD Presidential Appointee Vetting File, it has been determined that the records are covered under and is maintained in accordance with OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (December 9, 2013, 78 FR 73863). Therefore, DGC 20, DoD Presidential Appointee Vetting File can be deleted.

Dated: January 30, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

DoD Presidential Appointee Vetting File, DGC 20.

HISTORY: December 1, 2000, 65 FR 75246.

[FR Doc. 2017–02224 Filed 2–1–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2017 Diagnosis Related Group (DRG) Updates and Notice of Termination of Future Federal Register Notices Regarding the DRG Update

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of DRG revised rates and notice to terminate future **Federal Register** publication of the DRG Updates.

SUMMARY: This notice describes the changes made to the TRICARE DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS). It also provides the updated fixed loss cost outlier threshold, cost-to-charge ratios, and the data necessary to update the Fiscal Year (FY) 2017 rates. This notice also announces there will be no future **Federal Register** notices published for the annual DRG updates, as all information included in this notice will now be published on the Defense Health Agency's official Web site found at *http://www.health.mil.* As a result, FY 2017 is the last year for publication of the DRG notice.

DATES: The rates, weights, and Medicare PPS changes which affect the TRICARE DRG-based payment system contained in this notice are effective for discharges occurring on or after October 1, 2016.

ADDRESSES: Defense Health Agency (DHA), TRICARE, Medical Benefits and Reimbursement Office, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Sharon L. Seelmeyer, Medical Benefits and Reimbursement Section, TRICARE, telephone (303) 676–3690. Questions regarding payment of specific claims under the TRICARE DRG-based payment system should be addressed to the appropriate contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461); October 21, 1988 (53 FR 41331); December 16, 1988 (53 FR 50515); May 30, 1990 (55 FR 21863); October 22, 1990 (55 FR 42560); and September 10, 1998 (63 FR 48439).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE, is that the TRICARE DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the TRICARE system will follow the same rules that apply to the Medicare PPS. The Centers for Medicare & Medicaid Services (CMS) publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed in this notice. While the initial intent of this notice was to provide notification of the revised DRG weights and rates affecting the DRG based payment system, its relevance has been subsequently overshadowed by the public's online accessibility to the TRICARE manuals and reimbursement rates on the official Web site of the Military Health System (MHS) and the DHA (*http://www.health.mil*). As a result, the public has ready online access to all information published in this notice (*e.g.,* DRG weights and rates, to include adjusted standardized amounts, wage indexes and Indirect Medical Education (IDME) factors, and changes to rate variables, etc.) in either the TRICARE

Reimbursement Manual or on the official Web site of the MHS and the DHA (*http://www.health.mil*). Because of the readily available online access to updated DRG rates and the ongoing administrative burden of publishing annual notices to the **Federal Register**, the publication of the annual notice is terminated and no further notices will be published. Again, updates to the DRG weights and rates, and all information in this notice, will be maintained on the Agency's official Web site. FY 2017 will be the last year of publishing the annual notice to the **Federal Register**.

I. Medicare PPS Changes Which Affected the TRICARE DRG-Based Payment System

Following is a discussion of the changes CMS has made to the Medicare PPS that affect the TRICARE DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and the TRICARE DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is; sex, age, and discharge status). The Grouper used for the TRICARE DRG-based payment system is the same as the current Medicare Grouper with two modifications. The TRICARE system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and has implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 2001, DRG 435 has been replaced by DRG 523. The TRICARE system has replaced DRG 523 with the two age-based DRGs (900 and 901). For admissions occurring on or after October 1, 1995, the CHAMPUS Grouper hierarchy logic was changed so the age split (age <29 days) and assignments to Major Diagnostic Category (MDC) 15 occur before assignment of the pre-MDC DRGs. This resulted in all neonate tracheostomies and organ transplants to be grouped to MDC 15 and not to DRGs 480–483 or 495. For admissions occurring on or after October 1, 1998, the CHAMPUS Grouper hierarchy logic was changed to move DRG 103 to the pre-MDC DRGs and to assign patients to pre-MDC DRGs 480, 103, and 495 before assignment to MDC 15 DRGs and the neonatal DRGs. For admissions occurring on or after October 1, 2001, DRGs 512 and 513 were added to the pre-MDC DRGs, between DRGs 480 and 103 in the TRICARE Grouper hierarchy logic. For admissions occurring on or after October 1, 2004, DRG 483 was deleted and replaced with DRGs 541 and 542, splitting the assignment of cases on the basis of the performance of a major operating room procedure. The description for DRG 480 was changed to ''Liver Transplant and/or Intestinal Transplant,'' and the description for DRG 103 was changed to ''Heart/Heart Lung Transplant or Implant of Heart Assist System.'' For FY 2007, CMS implemented classification changes, including surgical hierarchy changes. The TRICARE Grouper incorporated all changes made to the Medicare Grouper, with the exception of the pre-surgical hierarchy changes, which will remain the same as FY 2006. For FY 2008, Medicare implemented their Medicare-Severity DRG (MS–DRG) based payment system. TRICARE, however, continued with the Centers for Medicare & Medicaid Services DRG-based (CMS–DRG) payment system for FY 2008. For FY 2009, the TRICARE/CHAMPUS DRG-based payment system shall be modeled on the MS–DRG system, with the following modifications.

The MS–DRG system consolidated the 43 pediatric CMS DRGs that were defined based on age less than or equal to 17 into the most clinically similar MS–DRGs. In their Inpatient Prospective Payment System final rule for MS–DRGs, Medicare stated for their population these pediatric CMS DRGs contained a very low volume of Medicare patients. At the same time, Medicare encouraged private insurers and other non-Medicare payers to make refinements to MS–DRGs to better suit the needs of the patients they serve. Consequently, TRICARE finds it appropriate to retain the pediatric CMS–DRGs for our population. TRICARE is also retaining the TRICARE-specific DRGs for neonates and substance use.

For FY09, TRICARE will use the MS–DRG v26.0 pre-MDC hierarchy, with the exception that MDC 15 is applied after DRG 011– 012 and before MDC 24.

For FY10, there are no additional or deleted DRGs.

For FY 11, the added DRGs and deleted DRGs are the same as those included in CMS' final rule published on August 16, 2010 (75 FR 50041–50677). That is, DRG 009 is deleted; DRGs 014 and 015 are being added.

For FY 12, the added DRGs and deleted DRGs are the same as those included in CMS' final rule published on August 18, 2011 (76 FR 51476–51846). That is, DRG 015 is deleted; DRGs 016 and 017 are being added.

For FY 2013 there are no new, revised, or deleted DRGs.

For FY 2014 there are no new, revised, or deleted DRGs.

For FY 2015 the added, deleted, and revised DRGs are the same as those included in the CMS' final rule published on August 22, 2014 (79 FR 49880) with the exception of endovascular cardiac valve replacement for which CMS added DRGs 266/267 and TRICARE added DRGs 317/318 because the TRICARE Grouper already has DRGs 266/267 assigned to a pediatric procedure.

For FY2016 the added, deleted, and revised DRGs are the same as those included in the CMS' final rule published on August 17, 2015 (80 FR 49326) with the exception of the cardiovascular procedure for which CMS added DRGs 268–272 and TRICARE added DRGs 275–279, because the TRICARE Grouper already has DRGs 268–272 assigned to a pediatric procedure. Effective October 1, 2015 (FY 2016), the ICD–10 coding system was implemented, replacing the ICD9 coding system.

For FY17 the added, deleted, and revised DRGs are the same as those included in the CMS' final rule published on August 22, 2016 (81 FR 56761). That is, DRG 230 is deleted; DRGs 229, 884, and 208 have been renamed.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE will continue to use the same wage index amounts used for the Medicare PPS. TRICARE will also duplicate all changes with regard to the wage index for specific hospitals that are redesignated by the Medicare Geographic Classification Review Board. In addition, TRICARE will continue to utilize the out-commuting wage index adjustment.

C. Revision of the Labor-Related Share of the Wage Index

TRICARE is adopting CMS' percentage of labor related share of the standardized amount. For wage index values greater than 1.0, the labor related portion of the Adjusted Standardized Amount (ASA) shall continue to equal 69.6 percent. For wage index values less than or equal to 1.0 the labor related portion of the ASA shall continue to equal 62 percent.

D. Hospital Market Basket

TRICARE will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS for all hospitals subject to the TRICARE DRG-based payment system according to

CMS' August 22, 2016 final rule. For FY17, the market basket is 2.7 percent. Note: Medicare's FY17 market basket index adjusts according to hospitals' compliance with quality data and electronic health record meaningful use submissions. These adjustments do not apply to the TRICARE Program.

E. Outlier Payments

Since TRICARE does not include capital payments in our DRG-based payments (TRICARE reimburses hospitals for their capital costs as reported annually to the contractor on a pass through basis), we will use the fixed loss cost outlier threshold calculated by CMS for paying cost outliers in the absence of capital prospective payments. For FY17, the TRICARE fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for IDME plus a fixed dollar amount. Thus, for FY17, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE DRG base payment rate (wage adjusted) for the DRG plus the IDME payment (if applicable) plus $21,710 (wage adjusted). The marginal cost factor for cost outliers continues to be 80 percent.

F. National Operating Standard Cost as a Share of Total Costs

The FY17 TRICARE National Operating Standard Cost as a Share of Total Costs (NOSCASTC) used in calculating the cost outlier threshold is 0.921. TRICARE uses the same methodology as CMS for calculating the NOSCASTC; however, the variables are different because TRICARE uses national cost to charge ratios while CMS uses hospital specific cost to charge ratios.

G. IDME Adjustment

Passage of the Medical Modernization Act of 2003 modified the formula multipliers to be used in the calculation of IDME adjustment factor. Since the IDME formula used by TRICARE does not include disproportionate share hospitals, the variables in the formula are different than Medicare's; however, the percentage reductions that will be applied to Medicare's formula will also be applied to the TRICARE IDME formula. The multiplier for the IDME adjustment factor for TRICARE for FY17 is 1.02.

H. Cost to Charge Ratio

TRICARE uses a national Medicare cost-to-charge ratio (CCR). For FY17, the Medicare CCR used for the TRICARE DRG-based payment system for acute care hospitals and neonates will be 0.2541. This is based on a weighted average of the hospital-specific Medicare CCRs (weighted by the number of Medicare discharges) after excluding hospitals not subject to the TRICARE DRG system (Sole Community Hospitals, Indian Health Service hospitals, and hospitals in Maryland). The Medicare CCR is used to calculate cost outlier payments, except for children's hospitals. The Medicare CCR has been increased by a factor of 1.0065 to include an additional allowance for bad debt. The 1.0065 factor reflects the provisions of the Middle Class Tax Relief and Job Creation Act of 2012. For children's hospital cost outliers, the CCR used is 0.2760.

I. Pricing of Claims

The final rule published on May 21, 2014 (79 FR 29085) set forth all final claims with discharge dates of October 1, 2014, or later and reimbursed under the TRICARE DRG-Based payment system, are to be priced using the rules, weights and rates in effect on as of the date of discharge. Prior to this, all final claims were priced using the rules, weights, and rates in effective as of the date of admission.

J. Updated Rates and Weights

The updated rates and weights are accessible through the Internet at *http://www.health.mil/rates.* The implementing regulations for the TRICARE/CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: January 30, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–02202 Filed 2–1–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–68–000.

Applicants: AIA Energy North America LLC, Duquesne Light Company, Duquesne Power, LLC.

Description: Application for Authorization under Section 203 of the FPA and Request for Expedited Action, et al. of AIA Energy North America LLC, et al.

Filed Date: 1/26/17.

Accession Number: 20170126–5201.

Comments Due: 5 p.m. ET 2/16/17.

Docket Numbers: EC17–69–000.

Applicants: American Electric Power Service Corporation, Indiana Michigan Power Company.

Description: Application for Authorization under Section 203 of the FPA of American Electric Power Service Corporation, *et al.*

Filed Date: 1/26/17.

Accession Number: 20170126–5208.

Comments Due: 5 p.m. ET 2/16/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1316–003*; ER11–2753–004; ER13–413–004; ER11–1933–006; ER12–1329–004; ER16–1888–003.*

Applicants: Silver State Solar Power North, LLC, Cedar Point Wind, LLC, USG Oregon LLC, Green Mountain Power Corporation, Wildcat Wind Farm I, LLC, Tidal Energy Marketing Inc.

Description: Notice of Change in Status of Silver State Solar Power North, LLC, *et al.*

Filed Date: 1/26/17.

Accession Number: 20170126–5207.

Comments Due: 5 p.m. ET 2/16/17.

Docket Numbers: ER15–535–003.

Applicants: Nevada Power Company.

Description: Compliance filing: OATT Order No. 676–H Compliance Filing 01.25.17 to be effective 2/1/2017.

Filed Date: 1/26/17.

Accession Number: 20170126–5095.

Comments Due: 5 p.m. ET 2/16/17.

Docket Numbers: ER17–626–001.

Applicants: Long Beach Peakers LLC.

Description: Tariff Amendment: Amendment to Tariff Revision Filing to be effective 12/23/2016.

Filed Date: 1/26/17.

Accession Number: 20170126–5115.

Comments Due: 5 p.m. ET 2/16/17.

Docket Numbers: ER17–856–000.

Applicants: PJM Interconnection, L.L.C., Rockland Electric Company.

Description: § 205(d) Rate Filing: RECO Request for Increase of Annual Transmission Revenue Requirement to be effective 4/3/2017.

Filed Date: 1/26/17.

Accession Number: 20170126–5152.

Comments Due: 5 p.m. ET 2/16/17.

Docket Numbers: ER17–857–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Revisions to Attach. K Related to Public Policy Trans. Study Process Timeline to be effective 3/27/2017.

Filed Date: 1/26/17.

Accession Number: 20170126–5166.

Comments Due: 5 p.m. ET 2/16/17.

Docket Numbers: ER17–858–000.
Applicants: 67RK 8me LLC.
Description: § 205(d) Rate Filing: Co-Tenancy Agreement to be effective 1/27/2017.
Filed Date: 1/26/17.
Accession Number: 20170126–5167.
Comments Due: 5 p.m. ET 2/16/17.
Docket Numbers: ER17–859–000.
Applicants: 65HK 8me LLC.
Description: § 205(d) Rate Filing: Co-Tenancy Agreement to be effective 1/27/2017.
Filed Date: 1/26/17.
Accession Number: 20170126–5168.
Comments Due: 5 p.m. ET 2/16/17.
Docket Numbers: ER17–860–000.
Applicants: 87RL 8me LLC.
Description: § 205(d) Rate Filing: Co-Tenancy Agreement to be effective 1/27/2017.
Filed Date: 1/26/17.
Accession Number: 20170126–5169.
Comments Due: 5 p.m. ET 2/16/17.
Docket Numbers: ER17–861–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2017–01–27_Schedule 31 Annual Update Filing to be effective 4/1/2017.
Filed Date: 1/27/17.
Accession Number: 20170127–5029.
Comments Due: 5 p.m. ET 2/17/17.
Docket Numbers: ER17–862–000.
Applicants: Bethel Wind Farm LLC.
Description: § 205(d) Rate Filing: Amendment of Bethel Wind Farm MBR Tariff to be effective 1/28/2017.
Filed Date: 1/27/17.
Accession Number: 20170127–5031.
Comments Due: 5 p.m. ET 2/17/17.
Docket Numbers: ER17–863–000.
Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Commonwealth Edison Company Submits PBOP Filing to be effective 3/27/2017.
Filed Date: 1/27/17.
Accession Number: 20170127–5034.
Comments Due: 5 p.m. ET 2/17/17.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH17–7–000.
Applicants: Oaktree Capital Group, LLC.
Description: Oaktree Capital Group, LLC FERC 65–B Waiver Notification.
Filed Date: 1/26/17.
Accession Number: 20170126–5211.
Comments Due: 5 p.m. ET 2/16/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–02225 Filed 2–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF17–3–000]

Cheniere Midstream Holdings, Inc.; Notice of Intent To Prepare an Environmental Impact Statement for the Planned Midcontinent Supply Header Interstate Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Midcontinent Supply Header Interstate Pipeline Project (MIDSHIP Project) involving construction and operation of facilities by Cheniere Midstream Holdings, Inc. (Cheniere Midstream) in Kingfisher, Canadian, Grady, Garvin, Stephens, Carter, Johnston, and Bryan Counties, Oklahoma and leased capacity on existing pipeline infrastructure in Oklahoma, Texas, and Louisiana. The Commission will use this EIS in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EIS. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 27, 2017.

If you sent comments on this project to the Commission before the opening of this docket on November 9, 2016, you will need to file those comments in Docket No. PF17–3–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need to Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to

Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF17–3–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public scoping session(s) its staff will conduct in the project area, scheduled as follows:

Date and time	Location
Monday, February 13, 2017, 4:00 to 8:00 p.m.	Donald W. Reynolds Community Center, 323 West Beech Street, Durant, OK 74701, (580) 924–3486.
Tuesday, February 14, 2017, 4:00 to 8:00 p.m.	Ardmore Convention Center, 2401 North Rockford Road, Ardmore, OK 73401, (580) 226–2862.
Wednesday, February 15, 2017, 4:00 to 8:00 p.m.	Elmore City Community Center, 104 S Main Street, Elmore City, OK 73433, (580) 788–2345.
Thursday, February 16, 2017, 4:00 to 8:00 p.m.	Redlands Community College, 1300 South Country Club Road, El Reno, OK 73036, (405) 262–2552.

The primary goal of these scoping sessions is to have you identify the specific environmental issues and concerns that should be considered in the EIS to be prepared for this project. Individual verbal comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of verbal comments, in a convenient way during the timeframe allotted.

Each scoping session is scheduled from 4:00 p.m. to 8:00 p.m. Central Standard Time. You may arrive at any time after 4:00 p.m. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival; distribution of numbers will be discontinued at 7:00 p.m. Please see appendix 1 for additional information on the session format and conduct.[1]

Your scoping comments will be recorded by the court reporter (with FERC staff or a representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see below for instructions on using eLibrary). If a significant number of people are interested in providing verbal comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentor.

It is important to note that verbal comments hold the same weight as written or electronically submitted comments. Although there will not be a formal presentation, Commission staff will be available throughout the comment session to answer your questions about the environmental review process. Representatives from Cheniere Midstream will also be present to answer project-specific questions.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 2.

Summary of the Planned Project

Cheniere Midstream plans to construct and operate about 218.4 miles of mainline and lateral natural gas pipeline and appurtenant facilities from Okarche to Bennington, Oklahoma, and to lease approximately 353.0 miles of existing pipeline capacity.

Zone 1 of the MIDSHIP Project would consist of the following facilities in Oklahoma:

- Approximately 198.1 miles of new 36-inch-diameter mainline pipeline in Kingfisher, Canadian, Grady, Garvin, Stephens, Carter, Johnston, and Bryan Counties;
- approximately 20.3 miles of new 24-inch-diameter lateral pipeline (referred to as the ''Chisholm Lateral'') in Kingfisher County;
- three new compressor stations, totaling 124,710 horsepower, in Canadian, Garvin, and Bryan Counties;
- nine receipt and two delivery meter stations in Kingfisher, Canadian, Grady, Garvin, and Bryan Counties; and
- other appurtenant facilities.

Zone 2 of the MIDSHIP Project would involve 353.0 miles of existing pipeline capacity leased from the Midcontinent Express Pipeline LLC, and/or Gulf Crossing Pipeline Company LLC pipelines, operated by Kinder Morgan and Boardwalk Pipeline Partners, LP, respectively.[2] The planned leased capacity would begin at Bennington, Oklahoma, and end at interconnects in the Perryville Hub area near Tallulah, Louisiana.

According to Cheniere Midstream, the two-zone system would provide about 1.4 billion cubic feet of natural gas per day from the South Central Oklahoma Oil Province (SCOOP) and Sooner Trend Anadarko Basin Canadian and Kingfisher (STACK) plays in Oklahoma to growing Gulf Coast markets via deliveries to existing market hubs near Atlanta, Texas and Perryville, Louisiana. The general location of the planned project facilities is shown in appendix 3.

Land Requirements for Construction

Construction of the planned facilities would disturb about 3,003 acres of land for the new mainline, Chisholm Lateral, and aboveground facilities. Cheniere Midstream would maintain about 1,431 acres for permanent operation of the MIDSHIP Project's facilities following construction; the remaining acreage would be restored and revert to former uses. About 66 percent of the planned mainline route and about 93 percent of the Chisholm Lateral route parallel existing pipeline or utility rights-of-way. Cheniere Midstream would not construct any new facilities or facility expansions as part of Zone 2.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or by calling (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] Cheniere Midstream will determine the system or systems on which pipeline capacity would be leased prior to submission of a certificate application.

whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- water resources, fisheries, and wetlands;
- vegetation and wildlife;
- endangered and threatened species;
- socioeconomics;
- land use;
- cultural resources;
- air quality and noise;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EIS.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Native American tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EIS for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities, the environmental information provided by Cheniere Midstream, and comments received at the project open houses. This preliminary list of issues may change based on your comments and our analysis:

- Impacts on water wells;
- threatened and endangered species;
- geological hazards; and
- pipeline route alternatives.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 4).

Becoming an Intervenor

Once Cheniere Midstream files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp*. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF17–3). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Cheniere Midstream has established toll-free telephone numbers ((888) 214–7275 for general inquiries or (800) 305–2466 for landowner inquiries) and an email support address (*midship@cheniere.com*) so that parties can contact them directly with questions about the project. You may also refer to Cheniere Midstream's project Web site for additional information at *http://www.cheniere.com/pipelines/midship/.*

Dated: January 27, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02223 Filed 2–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–697–002.

Applicants: Tonopah Solar Energy, LLC.

Description: Notification of Change in Facts of Tonopah Solar Energy, LLC.

Filed Date: 1/27/17.

Accession Number: 20170127–5132.

Comments Due: 5 p.m. ET 2/17/17.

Docket Numbers: ER16–2297–003; ER16–2506–001.

Applicants: Osborn Wind Energy, LLC, Oliver Wind III, LLC.

Description: Notice of Non-material Change in Status of Osborn Wind Energy, LLC, et al.

Filed Date: 1/27/17.

Accession Number: 20170127–5149.

Comments Due: 5 p.m. ET 2/17/17.

Docket Numbers: ER16–453–005.

Applicants: Northeast Transmission Development, LLC, PJM Interconnection, L.L.C.

Description: Compliance filing: NTD submits revisions to Att. H–27A re: Settlement Agreement on Nov 17, 2016 to be effective 2/1/2016.

Filed Date: 12/14/16.

Accession Number: 20161214–5228.

Comments Due: 5 p.m. ET 2/6/17.

Docket Numbers: ER17–864–000.

Applicants: Bayshore Solar A, LLC.

Description: Baseline eTariff Filing: Bayshore Solar A, LLC Co-Tenancy Agreement to be effective 1/28/2017.

Filed Date: 1/27/17.

Accession Number: 20170127–5128.

Comments Due: 5 p.m. ET 2/17/17.

Docket Numbers: ER17–865–000.

Applicants: Bayshore Solar B, LLC.

Description: Baseline eTariff Filing: Bayshore Solar B, LLC Co-Tenancy Agreement to be effective 1/28/2017.

Filed Date: 1/27/17.

Accession Number: 20170127–5134.

Comments Due: 5 p.m. ET 2/17/17.

Docket Numbers: ER17–866–000.

Applicants: Bayshore Solar C, LLC.

Description: Baseline eTariff Filing: Bayshore Solar C, LLC Co-Tenancy Agreement to be effective 1/28/2017.

Filed Date: 1/27/17.

Accession Number: 20170127–5137.

Comments Due: 5 p.m. ET 2/17/17.

Docket Numbers: ER17–868–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2017–01–27 EIM Implementation Agreement for City of Seattle to be effective 4/1/2017.

Filed Date: 1/27/17.

Accession Number: 20170127–5179.

Comments Due: 5 p.m. ET 2/17/17.

Docket Numbers: ER17–869–000.

Applicants: Essential Power Rock Springs, LLC.

Description: § 205(d) Rate Filing: 2017–01–27 EIM Implementation Agreement for City of Seattle to be effective 4/1/2017.

Filed Date: 1/27/17.

Accession Number: 20170127–5183.

Comments Due: 5 p.m. ET 2/17/17.

Docket Numbers: ER17–870–000.

Applicants: Essential Power OPP, LLC.

Description: § 205(d) Rate Filing: 2017–01–27 EIM Implementation Agreement for City of Seattle to be effective 4/1/2017.

Filed Date: 1/27/17.

Accession Number: 20170127–5191.

Comments Due: 5 p.m. ET 2/17/17.

Docket Numbers: ER17–871–000.

Applicants: Wisconsin Public Service Corporation.

Description: Tariff Cancellation: Cancellation of WPSC—Alger Delta Agreement to be effective 1/27/2017.

Filed Date: 1/27/17.

Accession Number: 20170127–5192.

Comments Due: 5 p.m. ET 2/17/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 27, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–02226 Filed 2–1–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–19–000]

Valley Crossing Pipeline, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Border Crossing Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the impacts of constructing and operating Valley Crossing Pipeline, LLC's (Valley Crossing) proposed Border Crossing Project located in Texas state waters approximately 30 miles east of Brownsville, Texas. The Commission will use this EA in its decision-making process to determine whether the project is consistent with the public interest.

This notice announces the opening of a public comment period also known as a scoping period. During this period, the Commission will gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific

comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues it will evaluate in the EA. To ensure that your comments are timely and properly recorded, please send them so that the Commission receives them in Washington, DC on or before February 27, 2017.

If you sent comments on this project to the Commission before the opening of this docket on November 21, 2016, you will need to file those comments in Docket No. CP17–19–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP17–19–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Valley Crossing proposes to construct and operate an approximately 1,000-foot-long, 42-inch-diameter, natural gas transmission pipeline across the international boundary between the United States of America and the United Mexican States (Mexico). The Border Crossing Project would connect the non-jurisdictional Valley Crossing System with the Mexican Marina Pipeline. The Border Crossing Project would deliver/export up to 2.6 billion cubic feet per day of natural gas to Mexico to serve electrical generation plants. As stated above, this international boundary crossing would occur in Texas state waters in the Gulf of Mexico and would affect approximately 1.5 acres of seafloor.

The general location of the proposed pipeline is shown in appendix 1.[1]

Non-Jurisdictional Facilities

As discussed above, Valley Crossing would also construct and operate a 165-mile-long, 42-inch-diameter, natural gas transmission pipeline system from Nueces County, Texas to the Border Crossing Project facilities. The proposed Valley Crossing System would be regulated by the Railroad Commission of Texas and does not fall under the jurisdiction of the FERC. Although these facilities are not part of the proposed action analyzed in the EA, we will include a description of these facilities and any available environmental impact information to inform stakeholders and decision-makers.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of an Authorization. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We note that many comments were filed prior to this notice. We want to assure those commentors that their concerns will be considered in the scope of our environmental review; you do not need to resubmit comments. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss the potential impacts on the marine environment that could occur as a result of construction and operation of the proposed project. We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the Commission's publicly accessible administrative record, commonly referred to as eLibrary. We may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371.

[2] ''Us'', ''we'', and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes: Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; concerned citizens; and other interested parties. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP17–19). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: January 27, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–02222 Filed 2–1–17; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 17–22; DA 17–60]

Termination of Dormant Proceedings

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau (CGB), seeks comment on whether certain docketed Commission proceedings should be terminated as dormant. The Commission's procedural rules, which were revised to streamline and improve the agency's docket management practices, delegate authority to the Chief, CGB to periodically review all open dockets and, in consultation with the responsible Bureaus or Offices, to identify those dockets that appear to be candidates for termination.

DATES: Comments are due on or before March 6, 2017, and reply comments are due on or before March 20, 2017.

ADDRESSES: Interested parties may submit comments, identified by CG Docket No. 17–22, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) at *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. In completing the transmittal screen, ECFS filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 17–22.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express mail and Priority mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lauren Wilson, Consumer and Governmental Affairs Bureau at (202) 418–1607 or by email at *lauren.wilson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice, *Consumer and Governmental Affairs Bureau Seeks Comment on Termination of Certain Proceedings as Dormant,* document DA 17–60, released on January 13, 2017, in CG Docket No. 17–22.

The full text of document DA 17–60 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Document DA

17–60 can also be downloaded in Word or Portable Document Format (PDF) at: *https://www.fcc.gov/document/sixth-dormant-docketstermination-public-notice.* The spreadsheet associated with document DA 17–60 listing the proceedings proposed for termination for dormancy is available in Excel or Portable Document Format at *https://www.fcc.gov/document/sixth-dormant-docketstermination-public-notice/attachment* as an Attachment.

Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the respective dates indicated in the **DATES** section of this document.

Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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

Synopsis: On February 4, 2011, the Commission released document FCC 11–16, *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, Report and Order,* 76 FR 24383, May 2, 2011, which revised portions of its Part 1—Practice and Procedure and Part 0—Organizational rules.

The revised rules, in part, delegate authority to the Chief, CGB to periodically review all open dockets and, in consultation with the responsible Bureaus or Offices, to identify those dockets that appear to be candidates for termination. These candidates include dockets in which no further action is required or contemplated, as well as those in which no pleadings or other documents have been filed for several years. However, the Commission specified that proceedings in which petitions addressing the merits are pending should not be terminated absent the parties' consent. The termination of a dormant proceeding also includes dismissal as moot of any pending petition, motion, or other request for relief that is procedural in nature or otherwise does not address the merits of the proceeding.

Prior to the termination of any particular proceeding, the Commission was directed to issue a Public Notice identifying the dockets under consideration for termination and affording interested parties an opportunity to comment. Thus, CGB has identified the dockets for possible termination in document DA 17–60, available at *https://www.fcc.gov/document/sixth-dormant-docketstermination-public-notice.*

Federal Communications Commission.

D'wana Terry,

Acting Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2017–02172 Filed 2–1–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, February 7, 2017 at 10:00 a.m. and its continuation at the conclusion of the open meeting on February 9, 2017.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Dayna C. Brown,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2017–02352 Filed 1–31–17; 4:15 pm]

BILLING CODE 6715–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2017–0025]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of teleconference meeting.

SUMMARY: The National Offshore Safety Advisory Committee will meet via teleconference to review and accept the minutes from the Fall 2016 Committee meeting and to discuss the issuance of a task statement to the Committee. The task statement is being issued by the U.S. Coast Guard and requests the Committee's input on Safety Management Systems for vessels engaging in Well Intervention Activities. This teleconference is open to the public.

DATES: The Committee will meet by teleconference on Tuesday February 21, 2017 from 10 a.m. Eastern Standard Time and will last approximately one hour. This meeting may end early if the Committee has completed its business, or it may be extended based on the number of public comments.

ADDRESSES: The meeting will be conducted via teleconference and the call in number is 1–855–475–2447. The participant code is 652 375 79. The number of teleconference lines is limited and will be available on a first come, first served basis.

For information on services for individuals with disabilities, or to request special assistance at the meeting, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Instructions: To facilitate public participation, written comments on the issues to be considered by the Committee, as listed in the ''Agenda'' section below, must be submitted no later than February 7, 2017, if you want the Committee members to be able to review your comments before the meeting. You must include the words ''Department of Homeland Security'' and the docket number for this action. Written comments may be submitted using the Federal e-Rulemaking Portal at *http://www.regulations.gov.* If you encounter technical difficulties with comment submission, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. 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).

Docket Search: For access to the docket or to read documents or comments related to this notice, go to *http://www.regulations.gov,* insert USCG–2017–0025 in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Commander Jose Perez, Designated Federal Officer of the National Offshore Safety Advisory Committee, Commandant (CG–OES–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509; telephone (202) 372–1410, fax (202) 372–8382 or email *jose.a.perez3@uscg.mil,* or Mr. Pat Clark, telephone (202) 372–1358, fax (202) 372–8382 or email *Patrick.w.clark@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* (Title 5, United States Code Appendix). The National Offshore Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters and actions concerning activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within U.S. Coast Guard jurisdiction.

A copy of all meeting documentation will be available within 90 days following the teleconference at *https://homeport.uscg.mil/nosac.* Alternatively, you may contact Mr. Pat Clark as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Agenda

The National Offshore Safety Advisory Committee will meet via teleconference on February 21, 2017 to discuss the introduction of a new task statement, ''Safety Management Systems for Vessels Engaging in Well Intervention Activities''. The task statement may be viewed by accessing the above listed Web site. Public comments or questions will be taken at the discretion of the Designated Federal Officer during the discussion and recommendation portions of the meeting and during the public comment period, see Agenda item (4).

A complete agenda for February 21, 2017 Committee meeting is as follows:

(1) Welcoming remarks.

(2) Review and accept minutes from November 2016 Committee public meeting.

(3) New Business—Introduction of task statement requesting National Offshore Safety Advisory Committee input on Safety Management Systems for Vessels Engaging in Well Intervention Activities.

(4) Public comment period.

A public oral comment period will be held during the teleconference, and speakers are requested to limit their comments to 3 minutes. Contact one of the individuals listed above to register as a speaker.

The agenda and the proposed new task statement will be available at *https://homeport.uscg.mil/nosac* for viewing by February 7, 2017. Alternatively, you may contact Mr. Pat Clark in the **FOR FURTHER INFORMATION CONTACT**.

Minutes

Meeting minutes from this public meeting will be available for public viewing and copying at *https://homeport.uscg.mil/nosac* following the close of the meeting to May 1, 2017.

Dated: January 26, 2017.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2017–02242 Filed 2–1–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2017–0006; OMB No. 1660–0126]

Agency Information Collection Activities: Proposed Collection; Comment Request; FEMA Preparedness Grants: Emergency Management Performance Grant (EMPG)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information collection activities required to administer the FEMA Emergency Management Performance Grants (EMPG).

DATES: Comments must be submitted on or before April 3, 2017.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2017–0006. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. 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 read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Angel McLaurine-Qualls, Program Specialist, DHS FEMA, Grant Programs Directorate, 202–786–9532. You may contact the Records Management Division for copies of the proposed

collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Emergency Management Performance Grants Program (EMPG) helps facilitate a national and regional all-hazards approach to emergency response, including the development of a comprehensive program of planning, training, and exercises that provides a foundation for effective and consistent response to any threatened or actual disaster or emergency, regardless of the cause. Section 662 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 762), as amended, empowers the FEMA Administrator to continue implementation of an Emergency Management Performance Grants Program to make grants to States to assist State, local, and tribal governments in preparing for all hazards, as authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Collection of Information

Title: FEMA Preparedness Grants: Emergency Management Performance Grant (EMPG).

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0126.

FEMA Forms: None.

Abstract: The Emergency Management Performance Grants (EMPG) Program assists State and local governments in enhancing and sustaining all-hazards emergency management capabilities. The EMPG Work Plan narrative must demonstrate how proposed projects address gaps, deficiencies, and capabilities in current programs and the ability to provide enhancements consistent with the purpose of the program and guidance provided by FEMA. FEMA uses the information to provide details, timelines, and milestones on proposed projects.

Affected Public: State, Local, Territorial, or Tribal Government.

Number of Respondents: 58.

Number of Responses: 58.

Estimated Total Annual Burden Hours: 174 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $9,008.26. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $415,206.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: January 23, 2017.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2017–02166 Filed 2–1–17; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2016–0092]

The Critical Infrastructure Partnership Advisory Council

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice of renewal of the Critical Infrastructure Partnership Advisory Council (CIPAC) Charter.

SUMMARY: The Department of Homeland Security (DHS) announced the establishment of the CIPAC in a **Federal Register** Notice (71 FR 14930–14933) dated March 24, 2006, which identified the purpose of CIPAC, as well as its membership. This notice provides: (i) Notification of the CIPAC charter renewal.

FOR FURTHER INFORMATION CONTACT: Renee Murphy, Designated Federal Officer, Critical Infrastructure Partnership Advisory Council, Sector Outreach and Programs Division, Office of Infrastructure Protection, National Protection and Programs Directorate, U.S. Department of Homeland Security, 245 Murray Lane, Mail Stop 0607, Arlington, VA 20598–0607; telephone: (703) 603–5083; email: *CIPAC@hq.dhs.gov.*

Responsible DHS Official: Renee Murphy, Designated Federal Officer for the CIPAC.

SUPPLEMENTARY INFORMATION:

Notice of CIPAC Charter Renewal: The CIPAC Charter was signed by Secretary of Homeland Security Jeh Johnson on November 30, 2016. It supersedes the CIPAC Charter dated December 7, 2014 and is available on the CIPAC Web site (*http://www.dhs.gov/cipac*).

Purpose and Activity: The CIPAC facilitates interaction between government officials and representatives of the community of owners and/or operators for each of the critical infrastructure sectors defined by Presidential Policy Directive 21 and identified in *National Infrastructure Protection Plan 2013: Partnering for Critical Infrastructure Security and Resilience* (NIPP 2013). The scope of activities covered by the CIPAC includes: Planning; coordinating among government and critical infrastructure owner and operator security partners; implementing security program initiatives; conducting operational activities related to critical infrastructure protection security measures, incident response, recovery, and infrastructure resilience; reconstituting critical infrastructure assets and systems for both manmade and naturally occurring events; and sharing threat, vulnerability, risk mitigation, and infrastructure continuity information.

Organizational Structure: CIPAC members are organized into 16 critical infrastructure sectors. These sectors have a Government Coordinating Council (GCC) whose membership includes: (i) A lead Federal agency that is defined as the Sector-Specific Agency (SSA); (ii) all relevant Federal, State, local, tribal, and/or territorial government agencies (or their representative bodies) whose mission interests also involve the scope of the CIPAC activities for that particular sector; and (iii) a Sector Coordinating Council (SCC), where applicable, whose membership includes critical infrastructure owners and/or operators or their representative trade associations.

CIPAC Membership: CIPAC Membership may include:

(i) Critical Infrastructure owner and operator members of a DHS-recognized SCC, including their representative trade associations or equivalent organization members of a SCC as determined by the SCC.

(ii) Federal, State, local, and tribal governmental entities comprising the

members of the GCC for each sector, including their representative organizations; members of the State, Local, Tribal, and Territorial Government Coordinating Council; and representatives of other Federal agencies with responsibility for Critical Infrastructure activities.

CIPAC Membership Roster and Council Information: CIPAC membership is organizational. Multiple individuals may participate in CIPAC activities on behalf of a member organization. Members of the public may visit the CIPAC Web site (*http://www.dhs.gov/cipac*) at any time to view current CIPAC membership, as well as the current and historic lists of CIPAC meetings and agendas.

Dated: January 23, 2017.

Renee Murphy,

Designated Federal Officer for the CIPAC.

[FR Doc. 2017–02167 Filed 2–1–17; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2017–0009]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee Management; Notice of Federal advisory committee meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will conduct a teleconference on Tuesday, February 21, 2017. The teleconference will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will conduct a teleconference on Tuesday, February 21, 2017, from 10:00 a.m. to 12:00 p.m. Please note that the teleconference may end early if the Committee has completed its business.

ADDRESSES: This will be a call and online forum (URL will be posted on the Privacy Office Web site in advance of the meeting at *www.dhs.gov/privacy-advisory-committees*). For information on services for individuals with disabilities, or to request special assistance, contact Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

To facilitate public participation, we invite public comment on the issues to be considered by the Committee as listed in the **SUPPLEMENTARY INFORMATION** section below. A public comment period will be held during the meeting from 11:45 a.m.–12:00 p.m., and speakers are requested to limit their comments to three minutes. If you would like to address the Committee at the meeting, we request that you register in advance. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments should be sent to Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by February 13, 2017. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2017–0009) and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: PrivacyCommittee@hq.dhs.gov.* Include the Docket Number (DHS–2017–0009) in the subject line of the message.
- *Fax:* (202) 343–4010.
- *Mail:* Sandra Taylor, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528.

Instructions: All submissions must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the Docket Number (DHS–2017–0009). Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

The DHS Privacy Office encourages you to register for the meeting in advance by contacting Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, at *PrivacyCommittee@hq.dhs.gov.* Advance registration is voluntary. The Privacy Act Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov* and search for docket number DHS–2017–0009.

FOR FURTHER INFORMATION CONTACT: Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *PrivacyCommittee@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Title 5, U.S.C., appendix. The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that relate to personally identifiable information, as well as data integrity and other privacy-related matters. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451.

Proposed Agenda

During the teleconference, the Committee will address and vote on draft recommendations for DHS to consider on best practices for a data breach notification should DHS suffer a significant incident. The final agenda will be posted on or before January 30, 2017, on the Committee's Web site at *www.dhs.gov/privacy-advisory-committees.* Please note that the call may end early if all business is completed.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit this information under its following authorities: The *Federal Records Act,* 44 U.S.C. 3101; the FACA, 5 U.S.C. appendix; and the *Privacy Act of 1974,* 5 U.S.C. 552a.

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS

may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–002 Mailing and Other Lists System of Records Notice (November 25, 2008, 73 FR 71659).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at *foia@hq.dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–002 Mailing and Other Lists System of Records referenced above.

Dated: January 23, 2017.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2017–02209 Filed 2–1–17; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/ A0A501010.999900 253G]

Water Infrastructure Improvements for the Nation Act; Indian Dam Safety

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public meeting.

SUMMARY: The Bureau of Indian Affairs (BIA), Office of Trust Services, Division of Water and Power, will be conducting a public meeting by teleconference to obtain input from landowners served by Indian dams on the implementation of the Water Infrastructure Improvements for the Nation Act with regard to Indian dam safety.

DATES: Written comments must be received by March 3, 2017. The teleconference will be held on Tuesday, February 14, 2017, from 1 p.m. to 4 p.m., Eastern Time.

ADDRESSES: You may submit comments by one of the following methods:

- *Email: consultation@bia.gov.*
- *By hard copy:* Submit by U.S. mail or hand delivery to: Ms. Elizabeth Appel, Office of Regulatory Affairs and Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 3642–MIB, Washington, DC 20240.

Please see the **SUPPLEMENTARY INFORMATION** section of this notice for directions for registering for and attending the teleconference session.

FOR FURTHER INFORMATION CONTACT: Yulan Jin, Division Chief, Water and Power, (202) 219–0941, *yulan.jin@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Water Infrastructure Improvements for the Nation (WIIN) Act became law on December 16, 2016. Section 3101 of the WIIN Act provides for consultation with affected Indian tribes, as well as solicitation and consideration of comments and recommendations from landowners served by relevant Indian dams, within 60 days of the Act's passage Section 3101 also requires the Secretary to submit a report to Congress within 120 days of enactment (by April 14, 2017) on programmatic goals to address the deferred maintenance needs of Indian dams and funding prioritization criteria for distributing funds from the High-Hazard Indian Dam Safety Deferred Maintenance Fund and the Low-Hazard Indian Dam Safety Deferred Maintenance Fund.

Section 3101 establishes a program to address the deferred maintenance needs of Indian dams and authorizes $32.75 million per year ($22.75 million designated for high- and significant-hazard potential dams and $10 million designated for low-hazard potential dams), plus accrued interest, for each of the fiscal years 2017 through 2023. Subject to appropriations, the funds would be available to carry out maintenance, repair, and replacement activities for qualified Indian dams.

Eligible dams are defined as dams that are included under the Indian Dams Safety Act of 1994 and that are: (1) Owned by the Federal Government (per Executive Order 13327) and managed by the BIA, including dams managed under Indian Self-Determination contracts or compacts; or (2) have deferred maintenance identified by the BIA.

II. Public Teleconference Session

The BIA will be hosting a public meeting by teleconference at the date listed in the **DATES** section of this notice. The call-in number is (800) 857–9738 and the passcode is 7199390. Please refer to the following Web site for additional information: *https://www.bia.gov/WhoWeAre/BIA/OTS/IPSOD/index.htm.*

Dated: January 27, 2017.

Michael S. Black,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2017–02201 Filed 2–1–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/ A0A501010.999900 253G]

Water Infrastructure Improvements for the Nation Act; Indian Dam Safety

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal consultation.

SUMMARY: The Bureau of Indian Affairs (BIA), Office of Trust Services, Division of Water and Power, will be conducting five consultation sessions to obtain oral and written comments on the implementation of the Water Infrastructure Improvements for the Nation Act with regard to Indian dam safety.

DATES: Written comments must be received by March 3, 2017. Please see the **SUPPLEMENTARY INFORMATION** section of this document for dates of Tribal consultation sessions.

ADDRESSES: You may submit comments by one of the following methods:

- *Email: consultation@bia.gov.*
- *By hard copy:* Submit by U.S. mail or hand delivery to: Ms. Elizabeth Appel, Office of Regulatory Affairs and Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 3642–MIB, Washington, DC 20240. Please note: If you provide comments by email, there is no need to provide a duplicate hard copy.

Please see the **SUPPLEMENTARY INFORMATION** section of this notice for information on the Tribal consultation sessions.

FOR FURTHER INFORMATION CONTACT: Yulan Jin, Division Chief, Water and Power, (202) 219–0941, *yulan.jin@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Water Infrastructure Improvements for the Nation (WIIN) Act became law on December 16, 2016. Section 3101 of the WIIN Act provides for consultation with representatives of affected Indian tribes, as well as the solicitation and consideration of comments and recommendations from landowners served by relevant Indians dams, within 60 days of the Act's passage. Section 3101 also requires the

Secretary to submit a report to Congress within 120 days of enactment (by April 14, 2017) on programmatic goals to address the deferred maintenance needs of Indian dams and funding prioritization criteria for distributing funds from the High-Hazard Indian Dam Safety Deferred Maintenance Fund and the Low-Hazard Indian Dam Safety Deferred Maintenance Fund.

Section 3101 establishes a program to address the deferred maintenance needs of Indian dams and authorizes $32.75 million per year ($22.75 million designated for high- and significant-hazard potential dams and $10 million designated for low-hazard potential dams), plus accrued interest, for each of the fiscal years 2017 through 2023. Subject to appropriation, the funds would be available to carry out maintenance, repair, and replacement activities for qualified Indian dams.

Eligible high-hazard potential dams are those included in the safety of dams program established under the Indian Dams Safety Act of 1994 that are either: (1) Owned by the Federal Government and managed by BIA, including dams managed under Indian Self-Determination contracts or compacts; or (2) have deferred maintenance documented by BIA. Eligible low-hazard potential dams are those covered under the Indian Dams Safety Act of 1994 and are either: (1) Owned by the Federal Government and managed by BIA, including dams managed under Indian Self-Determination contracts or compacts; or (2) have deferred maintenance documented by BIA.

II. Tribal Consultation Sessions

The BIA will be hosting three in-person Tribal consultation sessions. Additionally, two webinars will be held for Tribes unable to make an in-person session. Tribes were notified of these consultation sessions by letter. Tribes potentially affected by the Indian Dam Safety component of the WIIN Act include all Tribes because, while BIA has an inventory of high-hazard potential dams, no such inventory yet exists for low-hazard potential dams. For this reason, BIA also asks that Tribes notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice of any low-hazard potential dams subject to the Indian Dams Act of 1994.

Tribal consultation sessions will be held on the following dates at the following locations:

Date	Time	Location
Monday, February 6, 2017	1 p.m.–5 p.m. Local Time	Bureau of Indian Affairs, Medicine Wheel Room—Third Floor, 2021 4th Avenue North, Billings, MT 59101.
Wednesday, February 8, 2017	1 p.m.–5 p.m. Local Time	Indian Pueblo Cultural Center, Silver/Turquoise Conference Room, 2401 12th Street NW., Albuquerque, NM 87104.
Friday, February 10, 2017	1 p.m.–5 p.m. Local Time	Bureau of Indian Affairs, Federal Building Auditorium, 911 NE 11th Avenue, Portland, OR 97232.
Monday, February 13, 2017	1 p.m.–4 p.m. Eastern Time	Call-in number: (888) 810–4934, Passcode: 7199390.
Wednesday, February 15, 2017	1 p.m.–4 p.m. Eastern Time	Call-in number: (888) 810–4934, Passcode: 7199390.

BIA is developing drafts of the programmatic goals and funding prioritization criteria for discussion at the consultation sessions. These documents will be available at *https://www.bia.gov/WhoWeAre/BIA/OTS/IPSOD/index.htm* by January 23, 2017 to allow time to review prior to the first session.

Dated: January 27, 2017.

Michael S. Black,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2017–02200 Filed 2–1–17; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–965]

Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof; Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against certain products of Robert Bosch Tool Corporation and Robert Bosch GmbH, and a cease and desist order against Robert Bosch Tool Corporation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*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 1, 2015, based on a complaint filed by SawStop, LLC, and SD3, LLC (together, ''SawStop''). 80 FR 52791–92 (Sept. 1, 2015). The amended complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain table saws incorporating active injury mitigation technology and components thereof by reason of infringement of certain claims of United States Patent Nos. 7,225,712 (''the '712 patent''); 7,600,455 (''the '455 patent''); 7,610,836 (''the '836 patent''); 7,895,927 (''the '927 patent''); 8,011,279 (''the '279 patent''); and 8,191,450 (''the '450 patent''). The notice of investigation named as respondents Robert Bosch Tool Corp. of Mount Prospect, Illinois, and Robert Bosch GmbH of Baden-Wuerttemberg, Germany (together, ''Bosch''). *Id.* at 52792. The Office of Unfair Import Investigations is not a party to the investigation. *Id.*

The Commission terminated the investigation with respect to the '836 and '450 patents based on SawStop's withdrawal of allegations concerning

those patents. Order No. 8 (Mar. 10, 2016), *not reviewed,* Notice (Apr. 4, 2016); Order No. 13 (May 3, 2016), *not reviewed,* Notice (May 23, 2016).

On January 27, 2016, SawStop moved for a summary determination that it satisfied the economic prong of the domestic industry requirement. On February 8, 2016, Bosch indicated that it did not oppose the motion. On March 22, 2016, the ALJ granted the unopposed motion and determined that SawStop satisfied the economic prong of the domestic industry requirement. Order No. 10 (Mar. 22, 2016), *not reviewed,* Notice (Apr. 21, 2016).

On September 9, 2016, the ALJ issued his final initial determination finding a violation of section 337 with respect to the '927 and '279 patents, and no violation of section 337 with respect to the '712 and '455 patents. Specifically, he found that Bosch did not directly or contributorily infringe the '712 and '455 patents, but found that Bosch's REAXX table saw directly infringed the '927 and '279 patents and that Bosch's activation cartridges contributorily infringed the '927 and '279 patents. He also found that Bosch had failed to show that any of the patent claims were invalid, and that SawStop satisfied the domestic industry requirement with respect to all four patents. Based on these findings, on September 20, 2016, the ALJ recommended that a limited exclusion order issue against Bosch's infringing products, that a cease and desist order issue against Robert Bosch Tool Corporation, and that the bond during the period of Presidential review be set at zero percent. He also recommended that the scope of the exclusion order and cease and desist order specifically cover the contributorily infringing activation cartridges.

On September 26, 2016, SawStop and Bosch each petitioned for review of the ID. On October 4, 2016, the parties opposed each other's petitions. On November 10, 2016, the Commission determined not to review the ID, and requested briefing from the parties and the public on the issues of remedy, the public interest, and bonding. The Commission received responsive submissions from SawStop, Bosch, and the PowerTool Institute, Inc. on November 22, 2016, and reply submissions from SawStop and Bosch on December 2, 2016.

The Commission has determined that the appropriate remedy is a limited exclusion order prohibiting the entry of table saws incorporating active injury mitigation technology and components thereof that infringe claims 8 and 12 of the '927 patent and claims 1, 6, 16, and 17 of the '279 patent, and an order that Robert Bosch Tool Corp. cease and desist from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), or soliciting U.S. agents or distributors of imported table saws incorporating active injury mitigation technology and components thereof that infringe claims 8 and 12 of U.S. Patent the '927 patent and claims 1, 6, 16, and 17 of the '279 patent. The Commission has determined that the public interest factors enumerated in section 337(d) and (f), 19 U.S.C. 1337(d) and (f), do not preclude the issuance of the limited exclusion order or cease and desist order. The Commission has determined that bonding at zero percent of entered value is required during the period of Presidential review, 19 U.S.C. 1337(j). Commissioner Kieff dissents as to the bond determination, and writes separately to explain his views both concerning the basis for issuing the cease and desist order and for making the bond determination. The investigation is terminated.

The Commission's order and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

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 27, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–02178 Filed 2–1–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On January 30, 2017, a proposed Consent Decree in *United States of America* v. *EMD Millipore Corporation,* Civil Action No. 1:17–cv–34, was filed with the United States District Court for New Hampshire.

The proposed Consent Decree between the parties resolves the United States' claims that EMD Millipore violated the Clean Water Act and permits it holds under the Act at EMD Millipore's manufacturing facility in Jaffrey, New Hampshire. The proposed Consent Decree requires EMD Millipore to undertake work at its facility to comply with the Act and the permits it holds and to pay a $385,000 civil penalty.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to: *United States of America* v. *EMD Millipore Corporation,* Civil Action No. 1:17–cv–34, D.J. Ref. 90–5–1–1–11441. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–02241 Filed 2–1–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Extension to Public Comment Period for Consent Decree Under the Clean Air Act

On December 20, 2016, the Department of Justice lodged a proposed Second Partial Consent Decree with the United States District Court for the Northern District of California in the lawsuit entitled *In re: Volkswagen* ''*Clean Diesel*'' *Marketing, Sales Practices, and Products Liability Litigation,* Case No: MDL No. 2672 CRB (JSC). This Second Partial Consent Decree (''Decree'') is entered into between the United States, California, and all defendants (collectively,

''Volkswagen''). The Decree partially resolves the governments' claims for injunctive relief under the Clean Air Act and various California claims (including under the California Health and Safety Code) with respect to the 3.0 Liter Subject Vehicles. The Decree provides remedies for the cars on the road and the environmental harm from the violations.

Notice of the lodging of the proposed Decree was originally published in the **Federal Register** on December 29, 2016. See 81 FR 96046 (Dec. 29, 2016). The publication of the original notice opened a thirty (30) day period for public comment on the Decree. The publication of the present notice extends the period for public comment on the Decree to February 14, 2017.

Comments concerning the Decree should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *In re: Volkswagen ''Clean Diesel'' Marketing, Sales Practices, and Products Liability Litigation,* Case No: MDL No. 2672 CRB (JSC), and D.J. Ref. No. 90–5–2–1–11386.

All comments must be submitted no later than February 14, 2017. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611

The Decree may be viewed and downloaded from *http://www.cand.uscourts.gov/crb/vwmdl.* During the public comment period, the Decree may also be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

For the entire Decree and its appendices, please enclose a check or money order for $40.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a copy of certain portions of the Decree, please designate which portions are requested, and provide the appropriate amount of money. For the Decree without the exhibits and signature pages, the cost is $13.25 (with signature pages, $16.50). For Appendix A, the cost is $8.50. For Appendix B, the cost is $15.25. For the Mitigation Appendix, the cost is $.25.

Karen S. Dworkin,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–02161 Filed 2–1–17; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on National Science and Engineering Policy (SEP), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Tuesday, February 7, 2017 at 4:30 p.m. EST.

SUBJECT MATTER: Discussion of the charge for the new Committee on National Science and Engineering Policy.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A public listening line will be available. Members of the public must contact the Board Office and send an email message to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference for the public listening number.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is: Matt Wilson (*mbwilson@nsf.gov*), 4201 Wilson Blvd., Arlington, VA 22230.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2017–02359 Filed 1–31–17; 4:15 pm]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 10:00 a.m., Tuesday, February 7, 2017.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE., Washington, DC 20002.

STATUS: Open (with the exception of Executive Sessions).

CONTACT PERSON: Jeffrey Bryson, EVP & General Counsel/Secretary, (202) 760–4101; *jbryson@nw.org.*

AGENDA:

I. Call to Order
II. Approval of Minutes
III. Executive Session: External Audit Update
IV. Executive Session: Audit Committee Report
V. Executive Session: Report From CEO
VI. DC Office Lease Extension
VII. FY17 Budget Update
VIII. Management Program Background and Updates
IX. Adjournment

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(2) and (4) permit closure of the following portion(s) of this meeting:

- External Audit Update
- Audit Committee Report
- Report from CEO

Jeffrey T. Bryson,

EVP & General Counsel/Corporate Secretary.

[FR Doc. 2017–02270 Filed 1–31–17; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–286 and 50–333; License Nos. DPR–64 and DPR–59; NRC–2017–0015]

In the Matter of Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 3, LLC; Indian Point Nuclear Generating Unit No. 3; and Entergy Nuclear FitzPatrick, LLC; James A. FitzPatrick Nuclear Power Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the transfer of the Master Decommissioning Trust for Indian Point Nuclear Generating Unit No. 3 and James A FitzPatrick Nuclear Power

Plant from the Power Authority of the State of New York to Entergy Nuclear Operations, Inc., amendments to the Master Decommissioning Trust Agreement dated July 25, 1990, as amended, governing the Master Trust to facilitate the transfer, and license amendments to the operating licenses of Indian Point and FitzPatrick to modify the existing trust-related license conditions to reflect the proposed transfer of the Master Trust and to delete other license conditions in order to apply the requirements of 10 CFR 50.75(h)(1).

DATES: The Order was issued on January 27, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0015 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–2017–0015. 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: Dr. Diane Render, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3629; email: *Diane.Render@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 27th day of January 2017.

For the Nuclear Regulatory Commission.

Diane L. Render,

Project Manager, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—ORDER APPROVING TRANSFER OF CONTROL OF MASTER DECOMMISSIONING TRUST, AMENDMENTS TO MASTER DECOMMISSIONING TRUST AGREEMENT, AND LICENSE AMENDMENTS TO MODIFY AND DELETE DECOMMISSIONING TRUST LICENSE CONDITIONS

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–286 and 50–333; License Nos. DPR–64 and DPR–59; NRC–2017–0015] In the Matter of Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 3, LLC; Indian Point Nuclear Generating Unit No. 3; and Entergy Nuclear FitzPatrick, LLC; James A. FitzPatrick Nuclear Power Plant

ORDER APPROVING TRANSFER OF CONTROL OF MASTER DECOMMISSIONING TRUST, AMENDMENTS TO MASTER DECOMMISSIONING TRUST AGREEMENT, AND LICENSE AMENDMENTS TO MODIFY AND DELETE DECOMMISSIONING TRUST LICENSE CONDITIONS

I

Entergy Nuclear Indian Point 3, LLC (ENIP3) and Entergy Nuclear Operations, Inc. (ENO) are the owner and operator, respectively, of Facility Operating License No. DPR–64 for Indian Point Nuclear Generating Unit No. 3 (Indian Point Unit 3 or IP3). IP3 is a Westinghouse pressurized-water reactor located in Westchester County, New York. Entergy Nuclear FitzPatrick, LLC (ENF) and ENO are the owner and operator, respectively, of Renewed Facility Operating License No. DPR–59 for the James A. FitzPatrick Nuclear Power Plant (FitzPatrick). FitzPatrick is a General Electric boiling-water reactor located in Oswego County, New York.

II

By the application dated August 16, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16230A308), ENO requested, on behalf of itself, ENIP3, ENF, and the Power Authority of the State of New York (PASNY, which now does business as the New York Power Authority), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.90, ''Application for amendment of license, construction permit, or early site permit,'' that the U.S. Nuclear Regulatory Commission (NRC or the Commission) issue an Order consenting to (1) the transfer to ENO of the beneficial interest in the Master Decommissioning Trust (Master Trust), including all rights and obligations thereunder, held by PASNY for IP3 and FitzPatrick; (2) amendments to the Master Decommissioning Trust Agreement dated July 25, 1990 (ADAMS Accession No. ML100500726), as amended (Master Trust Agreement), governing the Master Trust in order to facilitate the transfer of control of the Master Trust; (3) amendments to the operating licenses for IP3 and FitzPatrick in order to modify the existing trust-related license conditions to reflect the proposed transfer of control of the Master Trust; and (4) amendments to delete certain existing trust-related license conditions in order to apply to IP3 and FitzPatrick the generic requirements of 10 CFR 50.75(h). The NRC's approval of this application is a precondition to completing the pending application submitted jointly by Exelon Generation Company, LLC (Exelon) and ENO, dated August 18, 2016 (ADAMS Accession No. ML16235A081), requesting that the NRC issue an Order and conforming amendment consenting to the direct license transfer of Renewed Facility Operating License No. DPR–59 for FitzPatrick from ENO to Exelon.

By Orders dated November 9, 2000 (ADAMS Accession Nos. ML003767953 and ML003768011), the NRC consented to the direct license transfers of IP3 and FitzPatrick from PASNY to their current owners and operator. As described in these Orders, however, PASNY remained the custodial holder of the decommissioning trust funds for IP3 and FitzPatrick in the Master Trust, which includes the Indian Point Unit 3 Decommissioning Trust Fund (IP3 Fund) and the FitzPatrick Decommissioning Trust Fund (FitzPatrick Fund). The Decommissioning Agreement for IP3 dated November 21, 2000, among PASNY, Entergy Nuclear, Inc. (ENI), and ENIP3, and the Decommissioning Agreement for FitzPatrick dated November 21, 2000, among PASNY, ENI, and ENF (the Decommissioning Agreements), contemplate the transfer of the decommissioning trust funds for IP3 and FitzPatrick to ENIP3 and ENF at the end of the initial terms of the IP3 and FitzPatrick operating licenses, respectively.

ENO and PASNY propose a transaction that will facilitate the transfer of control of the Master Trust to ENO, the current operator of IP3 and FitzPatrick. In addition to paying PASNY consideration for the acquisition of the Master Trust, the proposed transfer would require that ENO assume PASNY's responsibilities and obligations pursuant to the Decommissioning Agreements upon transfer of control of the Master Trust to ENO from PASNY. An Order directing the transfer of control of the Master Trust and consenting to the Master Trust Agreement amendments is required, because the terms of the Master Trust Agreement must be amended before the transfer. Under the license conditions of the operating licenses for IP3 and FitzPatrick, and the terms of the Master Trust Agreement itself, any such amendment requires the prior written consent of the Director of the Office of Nuclear Reactor Regulation. In addition, the existing license conditions do not contemplate the transfer of control of the Master Trust to ENO. Under the terms of Section 10.05 of the Master Trust Agreement, as amended, the terms of the agreement may be amended to comply with an Order issued by the NRC.

Thus, in accordance with these requirements, ENO, on behalf of ENIP3, ENF, and PASNY, requests that the NRC issue an Order directing the transfer of control of the Master Trust, consenting to an amendment to the Master Trust Agreement authorizing the

transfer of control of the Master Trust to ENO, and approving license amendments that modify and delete trust-related license conditions in the IP3 and FitzPatrick operating licenses. A notice of this application was published in the **Federal Register** on September 27, 2016 (81 FR 66305). On November 1, 2016 (ADAMS Accession No. ML16306A258), a request for a hearing on the application was filed by Ms. Susan H. Shapiro, on behalf of Indian Point Safe Energy Coalition, Hudson River Sloop Clearwater, Council on Intelligent Energy & Conservation Policy, Sierra Club Hudson Valley, Nuclear Information and Resource Service, Alliance for Green Economy, and Radiation and Public Health Project. On December 13, 2016 (ADAMS Accession No. ML16348A495), an Atomic Safety and Licensing Board denied the hearing request for failure to demonstrate standing.

Based on its review of the information in the application, and other information before the Commission, the NRC staff approves the proposed transfer of control of the Master Trust to ENO, along with the proposed amendments to the Master Trust Agreement, as amended. In addition, the NRC staff finds that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I, ''Nuclear Regulatory Commission''; the facilities will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the amendments can be conducted without endangering the public health and safety and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the amendments will not be inimical to the common defense and security or to the public health and safety; and the issuance of the amendments will be in accordance with 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by a safety evaluation dated January 27, 2017.

III

Accordingly, pursuant to Section 161i(4) of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.75, It is hereby ordered that the application to transfer control of the Master Trust for IP3 and Fitzpatrick to ENO and the amendments to the Master Trust Agreement are approved.

It is further ordered that the license amendments to the operating licenses of IP3 and FitzPatrick that modify existing trust-related license conditions to reflect the transfer of control of the Master Trust to ENO and delete other existing trust-related license conditions in order to apply the generic requirements of 10 CFR 50.75(h) to IP3 and FitzPatrick, are approved. The amendments shall be issued and made effective at the time that the transfer of control of the Master Trust is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated August 16, 2016, and the NRC staff safety evaluation dated January 27, 2017 (ADAMS Accession No. ML16336A492), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01–F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available documents created or received at the NRC are also accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, MD, this 27th day of January 2017.

For the Nuclear Regulatory Commission.

William M. Dean, Director,
Office of Nuclear Reactor Regulation.

[FR Doc. 2017–02214 Filed 2–1–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Digital I&C Systems; Notice of Meeting

The ACRS Subcommittee on Digital I&C Systems will hold a meeting on February 23, 2017, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Thursday, February 23, 2017—1:00 p.m. Until 5:00 p.m.

The Subcommittee will review the Updated Proposed Rulemaking on Cybersecurity for Fuel Cycle Facilities, including regulatory analysis and draft regulatory guidance. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christina Antonescu (Telephone 301–415–6792 or Email: *Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016, (81 FR 71543).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland. After registering with Security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: January 26, 2017.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2017–02216 Filed 2–1–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Future Plant Designs; Notice of Meeting

The ACRS Subcommittee on Future Plant Designs will hold a meeting on February 22, 2017, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of

portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Wednesday, February 22, 2017—8:30 a.m. Until 5:00 p.m.

The Subcommittee will receive a briefing on Advanced Reactor Design Criteria. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Michael Snodderly (Telephone 301–415–2241 or Email: *Michael.Snodderly@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016, (81 FR 71543).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland. After registering with Security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: January 26, 2017.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2017–02213 Filed 2–1–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

South Carolina Electric & Gas Company Virgil C. Summer Nuclear Station, Units 2 and 3; Passive Core Cooling System (PXS) Design Changes To Address Potential Gas Intrusion

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 56 to Combined Licenses (COL), NPF–93 and NPF–94. The COLs were issued to South Carolina Electric & Gas Company (the licensee); for construction and operation of the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, located in Fairfield County, South Carolina.

The granting of the exemption allows the changes to Tier 1 information asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and amendment were issued on November 25, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 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–2008–0441. 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. The request for the amendment and exemption was submitted by letter dated June 2, 2016 (ADAMS Accession No. ML16154A226).
- *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: Paul Kallan, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2809; email: *Paul.Kallan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and issuing License Amendment No. 56 to COLs, NPF–93 and NPF–94, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D, to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought proposed changes that would revise the Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific DCD Tier 2 information. The proposed amendment also involves related changes to plant-specific Tier 1 information, with corresponding changes to the associated COL Appendix C information.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing

a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16301A270.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). The exemption documents for VCSNS Units 2 and 3 can be found in ADAMS under Accession Nos. ML16301A217 and ML16301A229, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML16301A198 and ML16301A203, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VCSNS Units 2 and Unit 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated June 2, 2016, the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, appendix D, Section III.B, as part of license amendment request 16–02, ''Passive Core Cooling System (PXS) Design Changes to Address Potential Gas Intrusion (LAR–16–02).''

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML16301A270, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified DCD Tier 1 information, with corresponding changes to Appendix C of the Facility Combined Licenses as described in the licensee's request dated June 2, 2016. This exemption is related to, and necessary for, the granting of License Amendment No. 56, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML16301A270), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

By letter dated June 2, 2016, the licensee requested that the NRC amend the COLs for VCSNS, Units 2 and 3, COLs NPF–93 and NPF–94. The proposed amendment is described in Section I of this **Federal Register** notice.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on September 13, 2016 (81 FR 62926). No comments were received during the 30-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on June 2, 2016. The exemption and amendment were issued on November 25, 2016 as part of a combined package to the licensee (ADAMS Accession No. ML16301A175).

Dated at Rockville, Maryland, this 25th day of January 2017.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2017–02211 Filed 2–1–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Future Plant Designs; Notice of Meeting

The ACRS Subcommittee on Future Plant Designs will hold a meeting on February 23, 2017, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, February 23, 2017—8:30 a.m. Until 12:00 p.m.

The Subcommittee will review the design acceptance criteria inspection progress and results for piping and human factors. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christina Antonescu (Telephone 301–415–6792 or Email: *Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD

containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2016, (81 FR 71543).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland. After registering with Security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: January 26, 2017.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2017–02215 Filed 2–1–17; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0144, More Information Needed for the Person Named Below, RI 38–45

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revision of a currently approved information collection request (ICR) 3206–0144, More Information Needed for the Person Named, RI 38–45. As required by the Paperwork Reduction Act of as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until April 3, 2017. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Retirement Services, 1900 E Street NW., Washington, DC 20415–0001, Attention: Alberta Butler, Room 2347–E, or sent by email to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have Practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 38–45 is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: More Information Needed for the Person Named Below.

OMB Number: 3206–0144.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 3,000.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 250.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2017–02199 Filed 2–1–17; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2017–81 and CP2017–107]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 3, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the

proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2017–81 and CP2017–107; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 289 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* January 26, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Erin Mahagan; *Comments Due:* February 3, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–02163 Filed 2–1–17; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79883; File No. SR–IEX–2016–18]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To: (i) Amend Rules 11.190(a)(3) and 11.190(b)(8) To Modify the Operation of the Primary Peg Order Type; (ii) Amend Rule 11.190(h)(3)(C)(ii) and (D)(ii) Regarding Price Sliding in Locked and Crossed Markets To Simplify the Price Sliding Process for Both Primary Peg Orders and Discretionary Peg Orders Resting on or Posting to the Order Book; and (iii) Make Minor Housekeeping Changes To Conform Certain Terminology

January 26, 2017.

On November 29, 2016, the Investors 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 to: (i) Amend IEX Rules (''Rule(s)'') 11.190(a)(3) and 11.190(b)(8) to modify the operation of the primary peg order type; (ii) amend Rule 11.190(h)(3)(C)(ii) and (D)(ii) regarding price sliding in locked and crossed markets to modify the price sliding process for both primary peg orders and discretionary peg orders resting on or posting to the order book; and (iii) make minor housekeeping changes to conform certain terminology. The proposed rule change was published for comment in the **Federal Register** on December 13, 2016.[3] The Commission received no comment letters 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 27, 2017. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so as to allow sufficient time to consider the issues raised by the proposal. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 13, 2017, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–IEX–2016–18).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02186 Filed 2–1–17; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78(s)(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79502 (December 7, 2016), 81 FR 90035 (December 13, 2016).

[4] U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32457; File No. 812–14149]

Allstate Assurance Company, et al.; Notice of Application

January 27, 2017.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'' or ''Act''), exempting Allstate Assurance Company Separate Account B from all provisions of the Act, subject to certain conditions.

APPLICANTS: Allstate Assurance Company (the ''Company'') and Allstate Assurance Company Separate Account B (the ''Separate Account,'' and together with the Company, the ''Applicants'').

SUMMARY OF APPLICATION: The Applicants seek an order pursuant to Section 6(c) of the 1940 Act, exempting the Separate Account from all provisions of the 1940 Act, subject to certain conditions.

DATES: *Filing Date:* The application was filed on April 12, 2013, and amended and restated on February 18, 2014, August 20, 2015 and November 21, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request

a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 21, 2017, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, 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 Secretary of the Commission.

ADDRESSES: Secretary, SEC, 100 F Street NE., Washington, DC 20549–1090. Applicants: Allstate Assurance Company and Allstate Assurance Company Separate Account B, 3100 Sanders Road, Suite J5B, Northbrook, IL 60062.

FOR FURTHER INFORMATION CONTACT: Sally Samuel, Branch Chief, Disclosure Review and Accounting Office, Division of Investment Management, at (202) 551–6795.

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.

I. Applicants' Representations

1. The Separate Account was established as a managed separate account of the Company on August 21, 1967, for the purpose of funding certain variable annuity contracts (the ''Contracts''). The Separate Account is registered as an open-end management investment company under the Act (File No. 811–01525).

2. The Separate Account has retained Provident Investment Management, LLC, to serve as the investment adviser to the Separate Account and The Variable Annuity Life Insurance Company and The Paul Revere Life Insurance Company to provide administrative services to the Separate Account. A Board of Managers, a majority of which consists of persons who are independent of the Separate Account within the meaning of the Act, currently oversees the Separate Account's operations.

3. The Separate Account is one of two investment options available under the Contracts. The other investment option under the Contracts is the Company's general account, which pays a fixed rate of interest (''Fixed Account''). As of September 30, 2016, there were a total of 125 individual Contract owners, only 47 of whom were invested in the Separate Account. Contract owners may transfer account assets between the Fixed Account and the Separate Account but only once every 12 months.

4. Redemptions have significantly reduced the Separate Account's assets over the past decade and are likely to continue notwithstanding any positive investment performance that may result in a net increase in the Separate Account's assets. As of September 30, 2016, the Separate Account had approximately $800,000 in total net assets.

5. The public offering of the Contracts under the Securities Act of 1933 (''Securities Act'') was initially registered in 1967 (File No. 2–27135). The Company discontinued the sale of new Contracts in 1984. Although the Contracts allow Contract owners to make additional contributions, the Company has not received an additional contribution under the Contracts since November 2006, which was allocated to the Fixed Account. No contributions or transfers have been allocated to the Separate Account since 2002. The Company has no intention of offering the Contracts to new purchasers, and conducts no solicitation or marketing activities with respect to the Contracts.

II. Applicants' Legal Analysis

1. Applicants respectfully request that the Commission, pursuant to Section 6(c) of the Act, issue an Order granting an exemption from all provisions of the Act, subject to the conditions set out in Section III, below. Applicants believe, based on the grounds set out in the application, that the requested exemption meets the standards of Section 6(c) of the Act.

2. Section 6(c) of the Act authorizes the Commission to ''conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from the provisions of [the Act] or of any rule or regulation thereunder, if and to the extent that 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.]''

3. Applicants believe that the requested exemption is 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 3(c)(1) of the Act makes clear that Congress intended to exclude from the Act entities in which there is no significant public interest.[1] As noted above, only 47 individual beneficial owners are currently invested in the Separate Account, well below the 100 person limit of Section 3(c)(1). In addition, the Company discontinued the sale of new Contracts in 1984. Likewise, the Separate Account has not received any additional Contract owner money in over a decade. No salesperson is engaged in any solicitation or marketing activity with respect to the Contracts or the Separate Account, and no compensation is being paid for any such activity. The Company has no intention of offering the Contracts to new purchasers, or encouraging any investments in the Separate Account and will not do so if the Order is granted. Although the terms and conditions of the Contracts permit Contract owners to make future allocations to or investments in the Separate Account, Applicants assert that the Separate Account's historical experience strongly suggests that the likelihood of receiving any such allocation or investment is remote.

4. In addition, Applicants state that Contract owners do not need the protections afforded by the Act. Applicants assert that Contract owners are adequately protected by the fact that their longstanding relationship with the Company of over 30 years is established by the terms and conditions of the Contracts, which may not be changed without Contract owner approval except where permitted or required by applicable law. The Contracts, among other things, fix the fees and charges (including management fees) associated with the Separate Account, thus distinguishing the Separate Account from mutual funds whose expenses can change periodically. The Contracts also confer upon owners the right to receive at least annually a statement (a) reflecting the investment results for the prior year, (b) listing the investments of the Separate Account as of the date of the statement, and (c) reflecting the value of the accumulation units credited to the Contracts. Moreover, after the date of the Order requested by the application, Applicants will provide Contract owners with annual audited financial statements of the Company and the Separate Account pursuant to proposed condition 5 described below. In addition, the Contracts are governed by and administered according to state

[1] H.R. Rep. No. 96–1341 at 35 (1980); S. Rep. No. 96–958 at 20 (1980). (''Section 3(c)(1) was intended to exclude from the Act private companies in which there is no significant public interest and which are therefore not appropriate subjects of federal regulation.'')

insurance law, which requires that the Company maintain in the Separate Account assets with a value at least equal to the reserves and other contract liabilities with respect to the Separate Account; that the income, gains and losses, realized or unrealized, from assets allocated to the Separate Account be credited to or charged against the Separate Account, without regard to other income, gains or losses of the Company; and that assets of the Separate Account equal to the reserves and other contract liabilities with respect to the Separate Account not be charged with liabilities arising out of any other business the Company may conduct. Furthermore, the requested relief would be subject to the other conditions described in Section III, below.

5. Applicants state that there is very little Contract owner interest in the Separate Account. The last time a premium was received under a Contract was in November 2006, and the last time a premium or transfer was allocated to the Separate Account was in 2002. The Separate Account's assets have been declining due to redemptions over the past decade and are likely to continue to decline as the result of redemptions.

6. Applicants maintain that granting the requested relief would enable Applicants to avoid the difficulties of trying to efficiently manage the Separate Account in compliance with the diversification and other requirements of the Act as assets dwindle down to zero. Further, Applicants assert that granting the requested relief would enable Applicants to avoid the significant ongoing legal, accounting, and other costs of maintaining a registered investment company, which costs currently exceed the amount of revenues generated by the fees under the Contracts.

7. Applicants submit that the relief is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

III. Conditions

Applicants consent to the following conditions to any Order issued by the Commission:

1. The Company will continue to be responsible for satisfying all the obligations to Contract owners as specified under the terms of their Contracts. In addition, promptly after the issuance of the Notice of the application, the Company will deliver a written document to all Contract owners that will state that the Notice has been issued; that, consequently, after the order granting the relief requested in the Notice is issued, certain legal protections afforded to Contract owners allocating assets to an investment company registered under the Act no longer apply to them; that, nevertheless, the terms and conditions of such Contracts have not changed; and that the Company continues to be responsible for satisfying all the obligations to such Contract owners as specified under the terms of their Contracts. In the event a Contract owner transfers money from the Fixed Account to the Separate Account, the Company and the Separate Account will notify such transferring Contract owner that the Separate Account is no longer a Separate Account registered under the Act and provide the Contract owner a one-time opportunity to transfer the money back into the Fixed Account prior to the 12 month holding period required by the Contracts. Any subsequent transfer by the same Contract owner from the Fixed Account to the Separate Account will be subject to the 12 month holding period required by the Contracts.

2. The Company will continue to be responsible for maintaining records of the values under each owner's Contract, providing quarterly statements and transaction confirmations to Contract owners, and all other administrative functions in connection with the Separate Account. As in the past, the Company may retain one or more administrators to provide such services, but the Company will remain ultimately responsible therefor.

3. The Separate Account will at all times continue to be operated in the manner contemplated by Rule 0–1(e)(1) and (2) under the Act. Specifically:

(a) The Separate Account will continue to be an account established and maintained by an insurance company pursuant to the laws of a state or territory of the United States under which income, gains and losses, whether or not realized, from assets allocated to the Separate Account are, in accordance with the Contracts, credited to or charged against the Separate Account without regard to other income, gains or losses of the insurance company,

(b) the Separate Account shall be legally segregated and the assets of the Separate Account will, at the time during the year that adjustments in the reserves are made, have a value at least equal to the Company's reserves and other contract liabilities with respect to the Separate Account, and, at all other times, will have a value approximately equal to or in excess of such reserves and liabilities, and

(c) that portion of the Separate Account's assets having a value equal to such reserves and contract liabilities will not be chargeable with liabilities arising out of any other business that the Company may conduct.

4. The Company and the Separate Account will operate in compliance with applicable state insurance law, including but not limited to filing annual audited financial statements of the Company and the Separate Account with the insurance department of the Company's domiciliary state.

5. The Company will provide Contract owners invested in the Separate Account with copies of the annual audited financial statements of the Company and the Separate Account.

6. The Company and the Separate Account will not solicit additional contributions from Contract owners, or resume the sale of Contracts, and will not use the Separate Account to issue any other annuity contracts that would require the Separate Account to be registered under the Act unless so registered. In addition, the Company and the Separate Account will not solicit transfers from the Fixed Account into the Separate Account. Furthermore, the Separate Account will not be used for any other business other than as a funding vehicle for the Contracts.

7. The Separate Account will re-register under the Act should the number of beneficial owners invested in the Separate Account exceed 100.

8. The Separate Account will continue to create, maintain and keep current the books and records as set forth in Rules 31a–1 and 31a–2 under the Act for the periods specified by these Rules.

IV. Conclusion

For the reasons and upon the facts set forth above and in the application, Applicants submit that their exemptive request meets the standards set out in Section 6(c) of the Act and that the Commission, therefore, should grant the requested Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02181 Filed 2–1–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79892; File No. SR–ICC–2016–014]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change To Provide for the Clearance of Additional Credit Default Swap Contracts

January 27, 2017.

I. Introduction

On November 18, 2016, ICE Clear Credit LLC (''ICC'') 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 revise the ICC Rulebook (the ''Rules'') in order to provide for the clearance of Standard Australian Corporate Single Name CDS contracts (collectively, ''STAC Contracts'') and Standard Australian Financial Corporate Single Name CDS contracts (collectively, ''STAFC Contracts''). The proposed rule change was published for comment in the **Federal Register** on December 7, 2016.[3] The Commission did not receive comments on the proposed rule change. On January 18, 2017, the Commission designated a longer period for Commission action on the proposed rule change.[4] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The rule change adopts rules that provide the basis for ICC to clear additional credit default swap contracts. Specifically, ICC is amending Chapter 26 of the ICC Rules to add Subchapters 26M and 26N to provide for the clearance of STAC and STAFC Contracts, respectively. ICC represents clearing of the additional STAC and STAFC Contracts will not require any changes to ICC's Risk Management Framework or other policies and procedures constituting rules within the meaning of the Act.

ICC represents that STAC Contracts have similar terms to the Standard European Corporate Single Name CDS contracts (''STEC Contracts'') currently cleared by ICC and governed by Subchapter 26G of the ICC Rules. Therefore, ICC states that the rules found in Subchapter 26M largely mirror the ICC Rules for STEC Contracts in Subchapter 26G, with certain modifications that reflect differences in terms and market conventions between those contracts and STAC Contracts. STAC Contracts will be denominated in United States Dollars.

ICC Rule 26M–102 (Definitions) sets forth the definitions used for the STAC Contracts. ICC represents that the definitions are substantially the same as the definitions found in Subchapter 26G of the ICC Rules, other than certain conforming changes. Similarly, ICC states that its Rules 26M–203 (Restriction on Activity), 26M–206 (Notices Required of Participants with respect to STAC Contracts), 26M–303 (STAC Contract Adjustments), 26M–309 (Acceptance of STAC Contracts by ICE Clear Credit), 26M–315 (Terms of the Cleared STAC Contract), 26M–316 (Relevant Physical Settlement Matrix Updates), 26M–502 (Specified Actions), and 26M–616 (Contract Modification) reflect or incorporate the basic contract specifications for STAC Contracts and are substantially the same as under Subchapter 26G of the ICC Rules.

ICC states that STAFC Contracts have similar terms to the Standard European Financial Corporate Single Name CDS contracts (''STEFC Contracts'') currently cleared by ICC and governed by Subchapter 26H of the ICC Rules. Thus, ICC represents that the rules found in Subchapter 26N largely mirror the ICC Rules for STEFC Contracts in Subchapter 26H, with certain modifications that reflect differences in terms and market conventions between those contracts and STAFC Contracts. STAFC Contracts will be denominated in United States Dollars.

ICC Rule 26N–102 (Definitions) sets forth the definitions used for the STAFC Contracts. ICC states that the definitions are substantially the same as the definitions found in Subchapter 26H of the ICC Rules, other than certain conforming changes. ICC represents that its Rules 26N–203 (Restriction on Activity), 26N–206 (Notices Required of Participants with respect to STAFC Contracts), 26N–303 (STAFC Contract Adjustments), 26N–309 (Acceptance of STAFC Contracts by ICE Clear Credit), 26N–315 (Terms of the Cleared STAFC Contract), 26N–316 (Relevant Physical Settlement Matrix Updates), 26N–502 (Specified Actions), and 26N–616 (Contract Modification) reflect or incorporate the basic contract specifications for STAFC Contracts and are substantially the same as under Subchapter 26H of the ICC Rules.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[5] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act[6] requires that, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

The Commission finds that the rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to ICC. The rule changes expands clearing to additional products, the STAC and STAFC credit default swap contracts, thus promoting the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC represents that the STAC and STAFC contracts are similar to the STEC and STEFC Contracts that ICC currently clears, and that the STAC and STAFC Contracts will be cleared pursuant to ICC's existing clearing arrangements and related financial safeguards, protections and risk management procedures. Clearing of the STAC and STAFC Contracts will thus allow market participants an increased ability to manage risk, while ensuring the safeguarding of margin assets pursuant to clearing house rules. Therefore, the Commission believes that acceptance of the STAC and STAFC Contracts, on the terms and conditions set out in the Rules, is consistent with the prompt and accurate clearance of and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 79439 (December 1, 2016), 81 FR 88291 (December 7, 2016) (SR–ICC–2016–014).

[4] Securities Exchange Act Release No. 79821 (January 18, 2017), 82 FR 8450 (January 25, 2017) (SR–ICC–2016–014).

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [9] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–ICC–2016–014) be, and hereby is, approved.[11]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2017–02185 Filed 2–1–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32456]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 27, 2017.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January 2017. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 21, 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: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Jessica Shin, Attorney-Adviser, at (202) 551–5921 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

Nuveen New York Performance Plus Municipal Fund Inc.

[File No. 811–05931]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Nuveen New York Dividend Advantage Municipal Fund and, on May 26, 2015, made a final distribution to its shareholders based on net asset value. Expenses of approximately $38,358 incurred in connection with the reorganization were paid by applicant and approximately $283,472 were paid by the acquiring fund.

Filing Dates: The application was filed on January 22, 2016, and amended on November 14, 2016, and December 14, 2016.

Applicant's Address: 333 West Wacker Drive, Chicago, Illinois 60606.

Corsair Opportunity Fund

[File No. 811–22978]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 15, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $5,009 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on December 16, 2016.

Applicant's Address: 366 Madison Avenue, 12th Floor, New York, New York 10017.

SmartX ETF Trust

[File No. 811–22825]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on December 9, 2016, and amended on January 5, 2017.

Applicant's Address: c/o Guinness Atkinson Asset Management Inc., 21550 Oxnard Street, Suite 850, Woodland Hills, California 91367.

Vantagepoint Funds

[File No. 811–08941]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 14, 2016, applicant made a final liquidating distribution to its shareholders, based on net asset value. Applicant has established a liquidating trust to provide for the payment of certain identified contingent claims with respect to certain series of applicant. The parent company of applicant's investment adviser serves as administrator of the liquidating trust. Assets remaining in the liquidating trust will be distributed to its beneficiaries after the satisfaction of all claims. Expenses of $1,693,244 incurred in connection with the liquidation were paid by applicant and applicant's investment adviser. Applicant has retained $4,232,893 in cash and cash equivalents at its custodian bank to pay for certain accrued liabilities.

Filing Dates: The application was filed on November 14, 2016 and amended on January 5, 2017.

Applicant's Address: 777 North Capitol Street NE., Suite 600, Washington, District of Columbia 20002.

Matthews A Share Selections Fund, LLC

[File No. 811–22809]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 30, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $40,000 incurred in connection with the liquidation were paid by the former sole shareholder of each series of applicant. Applicant has retained a de minimis amount for the purpose of completing certain regulatory and liquidation activities in China. These de minimis amounts will be paid to the former sole shareholder of each series of applicant.

Filing Dates: The application was filed on October 20, 2016, and amended on December 19, 2016 and January 5, 2017.

Applicant's Address: Four Embarcadero Center, Suite 550, San Francisco, California 94111.

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[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(2).

[11] 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).

[12] 17 CFR 200.30–3(a)(12).

The Wall Street Fund, Inc.

[File No. 811–00515]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has transferred its assets to a corresponding series of the Wall Street EWM Funds Trust and, on September 30, 2014, made a final distribution to its shareholders based on net asset value. Expenses of $74,844 incurred in connection with the reorganization were paid by applicant and applicant's investment adviser.

Filing Date: The application was filed on December 20, 2016.

Applicant's Address: 55 East 52nd Street, 23rd Floor, New York, New York 10055.

Salient MLP Growth Fund

[File No. 811–22846]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on December 21, 2016.

Applicant's Address: 4265 San Felipe, Suite 800, Houston, Texas 77027.

OneAmerica Funds, Inc.

[File No. 811–05850]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 9, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $276,282 incurred in connection with the liquidation were paid by applicant's investment advisers.

Filing Date: The application was filed on December 23, 2016.

Applicant's Address: OneAmerican Square, Indianapolis, Indiana 46282.

First Trust Convertible Securities Income Fund

[File No. 811–23022]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on December 27, 2016.

Applicant's Address: 120 East Liberty Drive, Suite 400, Wheaton, Illinois 60187.

Calvert SAGE Fund

[File No. 811–22212]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Calvert Equity Portfolio, a series of Calvert Social Investment Fund and, on June 24, 2016, made a final distribution to its shareholders based on net asset value. Expenses of approximately $116,963 incurred in connection with the reorganization were paid by applicant and applicant's investment adviser.

Filing Date: The application was filed on December 30, 2016.

Applicant's Address: 4550 Montgomery Avenue, Suite 1000N, Bethesda, Maryland 20814.

SEI Liquid Asset Trust

[File No. 811–03231]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 22, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $79,758 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on December 30, 2016.

Applicant's Address: One Freedom Valley Drive, Oaks, Pennsylvania 19456.

CPG York Event Driven Strategies, LLC

[File No. 811–23085]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on December 30, 2016.

Applicant's Address: c/o Central Park Advisers, LLC, 805 Third Avenue, New York, New York 10022.

LMP Real Estate Income Fund Inc.

[File No. 811–21098]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has transferred its assets to Legg Mason Funds Trust and, on June 10, 2016, made a final distribution to its shareholders based on net asset value. Expenses of $635,553 incurred in connection with the reorganization were paid by applicant and applicant's investment adviser.

Filing Date: The application was filed on January 5, 2017.

Applicant's Address: 620 Eighth Avenue, New York, New York 10018.

Western Asset Managed High Income Fund Inc.

[File No. 811–07396]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has transferred its assets to Western Asset High Income Opportunity Fund Inc. and, on August 29, 2016, made a final distribution to its shareholders based on net asset value. Expenses of $792,374 incurred in connection with the reorganization were paid by applicant, applicant's investment adviser, and the acquiring fund.

Filing Date: The application was filed on January 5, 2017.

Applicant's Address: 620 Eighth Avenue, New York, New York 10018.

Western Asset Global Partners Income Fund Inc.

[File No. 811–07994]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has transferred its assets to Western Asset Global High Income Fund Inc. and, on August 29, 2016, made a final distribution to its shareholders based on net asset value. Expenses of $637,448 incurred in connection with the reorganization were paid by applicant, applicant's investment adviser, and the acquiring fund.

Filing Date: The application was filed on January 5, 2017.

Applicant's Address: 620 Eighth Avenue, New York, New York 10018.

Endowment Institutional TEI Fund W, L.P.

[File No. 811–22465]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 1, 2016, applicant made a liquidating distribution to its shareholders, based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Date: The application was filed on January 5, 2017.

Applicant's Address: 4265 San Felipe, 8th Floor, Houston, Texas 77027.

American Funds Global High-Income Opportunities Fund

[File No. 811–22745]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has

never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on January 13, 2017.

Applicant's Address: 6455 Irvine Center Drive, Irvine, California 92618.

GAI Aurora Opportunities Fund, LLC

[File No. 811–22516]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to GAI Corbin Multi-Strategy Fund, LLC and, on September 30, 2016, made a final distribution to its shareholders based on net asset value. Expenses of $188,478 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on January 23, 2017.

Applicant's Address: 401 South Tryon Street, Charlotte, North Carolina 28202.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02180 Filed 2–1–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79889; File No. SR–ICC–2017–001]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement Collateral Fee Changes

January 27, 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 January 23, 2017, ICE Clear Credit LLC (''ICC'') 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 primarily by ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed changes is to implement changes to the fee that ICC charges for U.S. Treasury securities collateral deposits.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The proposed revisions are intended to implement changes to the fee that ICC charges for U.S. Treasury securities collateral deposits. The proposed changes are described in detail as follows.

Currently, with respect to collateral deposited by Clearing Participants with ICC for the purpose of satisfying margin and Guaranty Fund requirements, ICC imposes a 5 basis point fee on U.S. Treasury securities collateral deposits.[5] The fee is calculated and charged monthly, and applies to both house and client accounts.[6]

Effective February 1, 2017, ICC will be changing the fee charged for U.S. Treasury securities collateral deposits from 5 basis points to 7.5 basis points. This fee will continue to be calculated and charged monthly, and will continue to apply to both house and client accounts. ICC believes this change will lead to an increase in the posting of cash collateral by Clearing Participants and their clients, as opposed to U.S. Treasury securities.

ICC believes the proposed rule changes are consistent with the requirements of the Act including Section 17A of the Act.[7] More specifically, the proposed rule changes establish or change a member due, fee or other charge imposed by ICC under Section 19(b)(3)(A)(ii)[8] of the Act and Rule 19b–4(f)(2)[9] thereunder. ICC believes the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(D),[10] because the proposed collateral fee change applies equally to all market participants and such fees are in-line with similar fees charged by market participants. Therefore the proposed changes provide for the equitable allocation of reasonable dues, fees and other charges among participants. As such, the proposed changes are appropriately filed pursuant to Section 19(b)(3)(A)[11] of the Act and paragraph (f)(2) of Rule 19b–4 thereunder.[12]

Further, ICC believes such changes are consistent with Section 17A(b)(3)(F),[13] because ICC believes that the collateral fee change will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions. The proposed collateral fee change is intended to increase cash collateral held at the clearing house, which would minimize liquidity risk and reduce the likelihood that assets securing participant obligations would be unavailable when ICC needs to draw on them, thus safeguarding ICC's ability to meet its settlement obligations.

B. Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed collateral fee change applies consistently across all market participants and implementation of the proposed collateral fee change does not preclude the implementation of similar fee changes by other market participants. Therefore, ICC does not believe the collateral fee change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

[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).

[5] See Securities Exchange Act Release 71511 (February 7, 2014), 79 FR 8760 (February 13, 2014) (SR–ICC–2014–01).

[6] See ICC Circular 2013/032, as modified by ICC Circular 2014/004.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78q–1(b)(3)(D).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78q–1(b)(3)(F).

C. Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission, or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2017–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2017–001. 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, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.* 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–ICC–2017–001 and should be submitted on or before February 23, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02183 Filed 2–1–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79887; File No. SR–ISE–2017–02]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Amend the Opening Process

January 27, 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 January 13, 2017, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the opening process.

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

The purpose of this rule change is to amend the ISE opening process in connection with a technology migration to a Nasdaq, Inc. (''Nasdaq'') supported architecture. INET is the proprietary core technology utilized across Nasdaq's global markets and utilized on The NASDAQ Options Market LLC (''NOM''), NASDAQ PHLX LLC (''Phlx'') and NASDAQ BX, Inc. (''BX'') (collectively ''Nasdaq Exchanges''). The migration of ISE to the Nasdaq INET architecture would result in higher performance, scalability, and more robust architecture. With this system migration, the Exchange intends to adopt the Phlx opening process.

The Exchange intends to begin implementation of the proposed rule change in Q2 2017. The migration will be on a symbol by symbol basis, and the Exchange will issue an alert to Members to provide notification of the symbols that will migrate and the relevant dates.

Generally

With the re-platform, the Exchange will now be built on the Nasdaq INET architecture, which allows certain trading system functionality to be performed in parallel. The Exchange believes that this architecture change will improve the Member experience by reducing overall latency compared to the current ISE system because of the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

manner in which the system is segregated into component parts to handle processing.

Opening Rotation

ISE will replace its current opening process at Rule 701 with Phlx's Opening Process.[3] The Exchange believes that the proposed opening process will provide a similar experience for Members and investors that trade on ISE to the experience that they receive on Phlx today.

Current Opening Process

Today, for each class of options that has been approved for trading, the opening rotation is conducted by the Primary Market Maker (''PMM'') appointed to such class of options pursuant to ISE Rule 701(b)(1). The Exchange may direct that one or more trading rotations be employed on any business day to aid in producing a fair and orderly market pursuant to ISE Rule 701(a)(1). For each rotation so employed, except as the Exchange may direct, rotations are conducted in the order and manner the PMM determines to be appropriate under the circumstances pursuant to ISE Rule 701(a)(2). The PMM, with the approval of the Exchange, has the authority to determine the rotation order and manner and may also employ multiple trading rotations simultaneously pursuant to ISE Rule 701(a)(3).

Trading rotations are employed at the opening of the Exchange each business day and during the reopening of the market after a trading halt pursuant to ISE Rule 701(b). The opening rotation in each class of options is held promptly following the opening of the market for the underlying security.[4] The opening rotation for options contracts in an underlying security is delayed until the market for such underlying security has opened unless the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the options contracts pursuant to ISE Rule 701(b)(3).

Market Makers on ISE are held to quoting obligations as outlined in ISE Rule 803. Further, Market Makers quotes prior to the opening rotation, including PMM quotes, are permitted with spread differential of no more than $0.25 between the bid and offer for each options contract for which the bid is less than $2, no more than $0.40 where the bid is at least $2 but does not exceed $5, no more than $0.50 where the bid is more than $5 but does not exceed $10, no more than $0.80 where the bid is more than $10 but does not exceed $20, and no more than $1 where the bid is $20 or greater, provided that the Exchange may establish differences other than the above for one or more options series, as specified in ISE Rule 803(b)(4). These differentials are defined as Valid Width Quotes for purposes of this rule proposal.

The PMM appointed to an option class can initiate the rotation process by sending a rotation request to the Exchange or by authorizing the Exchange to auto-rotate the class. In addition, there are instances where the PMM is unable to initiate the rotation process. In such instances the Exchange may initiate the rotation process by using the Exchange's ''Delayed Opening Process,'' which provides an alternative method for opening an option class when the PMM is unable to initiate the rotation process.[5] Once the PMM or Exchange initiates the opening rotation, the Exchange will automatically process displayed quotes and orders via a process that determines the price at which the maximum number of contracts can trade within certain established boundary prices. In order to protect interest from trading at bad prices, quotes and orders are not executed outside of the established boundary prices. If there are no quotes or orders that lock or cross each other, the Exchange will open a series by disseminating the Exchange's best bid and offer among quotes and orders under certain conditions.

The Exchange proposes to replace this process with an opening process similar to a recently approved Phlx opening process as noted above.[6]

Opening Process

The Exchange will adopt a ''Definitions'' section at proposed ISE Rule 701(a), similar to Phlx Rule 1017(a), to define several terms that are used throughout the opening rule. Similar to today, the Exchange will conduct an electronic opening for all option series traded on the Exchange using its trading system (hereinafter ''system'').

The Exchange proposes to define the following terms, which are described below: ''ABBO,'' ''market for the underlying security,'' ''Opening Price,'' ''Opening Process,'' ''Pre-Market BBO,'' ''Potential Opening Price,'' ''Quality Opening Market,'' ''Valid Width Quote,'' and ''Zero Bid Market.''

The Exchange proposes to define ''Opening Process'' at proposed Rule 701(a)(4) by cross-referencing proposed Rule 701(c). The Exchange proposes to define ''Opening Price'' at proposed Rule 701(a)(3) by cross-referencing proposed Rule 701(h) and (j). The Exchange proposes to define ''Potential Opening Price'' at proposed Rule 701(a)(5) by cross-referencing proposed Rule 701(g). The Exchange proposes to define ''ABBO'' at proposed Rule 701(a)(1) as the Away Best Bid or Offer. The ABBO does not include ISE's market. The Exchange proposes to define ''market for the underlying security'' at proposed Rule 702(a)(2) as either the primary listing market or the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), as determined by the Exchange by underlying and announced to the membership on the Exchange's Web site.[7] The Exchange notes that the term ''Market Makers'' is currently defined in ISE Rule 100(a)(25) as referring to Primary Market Makers or ''PMMs'' and Competitive Market Makers or ''CMMs,'' collectively. The next definition is ''Pre-Market BBO'' defined at proposed Rule 701(a)(6) as the highest bid and the lowest offer among Valid Width Quotes.[8] The term ''Quality Opening Market'' is defined at proposed Rule 701(a)(7) as a bid/ask differential applicable to the best bid and offer from all Valid Width Quotes defined in a table to be determined by the Exchange and published on the Exchange's Web site.[9] This calculation of Quality Opening Market is based on the best bid and offer of Valid Width Quotes. The differential between the best bid and offer are compared to reach this determination. The allowable differential, as determined by the Exchange, takes into account the type of

[3] *See* Phlx Rule 1017. *See* also Securities Exchange Act Release No. 79274 (November 9, 2016), 81 FR 80694 (November 16, 2016) (SR–Phlx–2017–79) (notice of Filing of Partial Amendment No. 2 and Order Granting Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 2, to Amend PHLX Rule 1017, Openings in Options).

[4] The ''market for the underlying security'' is either the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), or the first market to open the underlying security, as determined by the Exchange on an issue-by-issue basis. *See* ISE Rule 701(b)(2).

[5] Certain conditions must be met for the Delayed Opening Process to be used to initiate the opening process.

[6] *See* note 3 above.

[7] Today, all are the primary listing market. The Exchange would consider switching to primary volume market if a different market begins to trade more volume than the primary listing market and the primary volume market becomes a more reliable source of prices with more liquidity.

[8] Valid Width Quotes is defined at proposed Rule 701(a)(8).

[9] Phlx maintains a table on its Web site with this information. *See http://www.nasdaqtrader.com/content/phlx/phlx_systemtime.pdf.* ISE will publish similar details on its Web site.

security (for example, Penny Pilot versus non-Penny Pilot issue), volatility, option premium, and liquidity. The Exchange utilizes its experience with products to make this determination. Next, a ''Valid Width Quote'' is defined at proposed Rule 701(a)(8) as a two-sided electronic quotation submitted by a Market Maker that consists of a bid/ask differential that is compliant with Rule 803(b)(4). The term ''Zero Bid Market'' is defined at proposed 701(a)(9) where the best bid for an options series is zero. The Exchange believes that these definitions will bring additional clarity to the proposed rule.

Eligible Interest

The first part of the Opening Process determines what constitutes eligible interest. The Exchange proposes to adopt in proposed paragraph (b) of Rule 701 a provision that eligible opening interest includes: (i) Valid Width Quotes; (ii) Opening Sweeps; and (iii) orders. Market Makers may submit quotes,[10] Opening Sweeps and orders, but quotes other than Valid Width Quotes will not be included in the Opening Process. All-or-None Orders [11] that can be satisfied, and the displayed and non-displayed portions of Reserve Orders are considered for execution and in determining the Opening Price throughout the Opening Process.

The Exchange notes that Opening Sweeps may be submitted through the new Specialized Quote Feed or ''SQF'' protocol which permits one-sided orders to be entered by a Market Maker. Today, orders are entered by all participants through FIX and/or DTI on ISE. After the re-platform the INET architecture, all participants will continue to be able to submit orders through FIX, however, DTI will no longer be available. An Opening Sweep is a Market Maker order submitted for execution against eligible interest in the system during the Opening Process.[12] It is similar to an Opening Only Order [13] that can be entered for the opening rotation only and any portion of the order that is not executed during the opening rotation is cancelled. However, it should also be noted that an Opening Sweep may only be submitted by a Market Maker when he/she has a Valid Width Quote in the affected series whereas, there is no such restriction on Opening Only Orders. Since the protocol over which an Opening Sweep is submitted is used for Market Maker quoting, the acceptance of an Opening Sweep was structured to rely on the Valid Width Quote. If a Market Maker does not want to submit or is unable to maintain a Valid Width Quote, the Market Maker can submit Opening Only Order instead.

Opening Sweep

Proposed Rule 701(b)(1)(i) provides that a Market Maker assigned in a particular option may only submit an Opening Sweep if, at the time of entry of the Opening Sweep, that Market Maker has already submitted and maintains a Valid Width Quote. All Opening Sweeps in the affected series entered by a Market Maker will be cancelled immediately if that Market Maker fails to maintain a continuous quote with a Valid Width Quote in the affected series. Opening Sweeps may be entered at any price with a minimum price variation applicable to the affected series, on either side of the market, at single or multiple price level(s), and may be cancelled and re-entered. A single Market Maker may enter multiple Opening Sweeps, with each Opening Sweep at a different price level. If a Market Maker submits multiple Opening Sweeps, the system will consider only the most recent Opening Sweep at each price level submitted by such Market Maker in determining the Opening Price. Unexecuted Opening Sweeps will be cancelled once the affected series is open.[14]

Proposed Rule 701(b)(2) states that the system will aggregate the size of all eligible interest for a particular participant category [15] at a particular price level for trade allocation purposes pursuant to ISE Rule 713. Eligible interest may be submitted into ISE's system and will be received starting at the times noted herein. Proposed Rule 701(c) provides that Market Maker Valid Width Quotes and Opening Sweeps received starting at 9:25 a.m. Eastern Time, or 7:25 a.m. Eastern Time for U.S. dollar-settled foreign currency options, are included in the Opening Process.[16] Orders entered at any time before an option series opens are included in the Opening Process. Orders may be entered at any time before an options series opens and are included in the Opening Process. This proposed language adds specificity to the rule regarding the submission of orders. The 9:25 a.m. Eastern Time and 7:25 a.m. Eastern Time triggers are intended to tie the option Opening Process to quoting in the underlying security [17]; it presumes that option quotes submitted before any indicative quotes have been disseminated for the underlying security may not be reliable or intentional. Therefore, the Exchange has chosen a reasonable timeframe at which to begin utilizing option quotes, based on the Exchange's experience when underlying quotes start becoming available.

Proposed Rule 701(c)(1) describes when the Opening Process can begin with specific time-related triggers. The proposed rule provides that the Opening Process for an option series will be conducted pursuant to proposed Rule 701(f) though (j) on or after 9:30 a.m. Eastern Time, or on or after 7:30 a.m. Eastern Time for U.S. dollar-settled foreign currency options, if: The ABBO, if any is not crossed and the system has received, within two minutes (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's Web site) of the opening trade or quote on the market for the underlying security in the case of equity options or, in the case of index options, within two minutes of the receipt of the opening price in the underlying index (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's Web site), or within two minutes of market opening for the underlying security in the case of U.S. dollar-settled foreign currency options (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's Web site) [18] any of the following: (i) The

[10] The term quotes shall refer to a two-sided quote.

[11] An All-or-None Order is a Limit or Market Order that is to be executed in its entirety or not at all. *See* ISE Rule 715(c). If the contingency of the size could not be satisfied the All-or-None Order will not be considered in the Opening Process.

[12] *See* proposed ISE Rule 715(t).

[13] *See* ISE Rule 715(o).

[14] *See* proposed ISE Rule 701(b)(1)(ii). *See also* proposed ISE Rule 715(t).

[15] ISE allocates first to Priority Customers and then to all other Members by pro-rata. This is different from Phlx which allocates to Customers first, then to market makers pro-rata and then to all others pro-rata. *See* ISE Rule 713 and Phlx Rule 1014(g)(vii).

[16] The timing is different to open U.S. dollar-settled foreign currency options because these options normally open earlier in the day on ISE as compared to other option series which open in the day at 9:30 a.m. Eastern Time. These times are not being amended. *See* ISE Rule 2008 (the rules contained in ISE Chapter 22 are incorporated by reference into ISE Chapter 22), for transactions in options on a Foreign Currency Index may be effected on the Exchange between the hours of 7:30 a.m. Eastern Time and 4:15 p.m. Eastern Time.

[17] For purposes of this rule, the underlying security can also be an index.

[18] The Exchange anticipates initially setting the timeframe during which a PMM Valid Width quote or the presence of at least two CMM Valid Width Quotes will initiate the Opening Process at 30 seconds. The timeframe is consistent with the current timeframe utilized on Phlx. The Exchange believes 30 seconds is the appropriate amount of time as it provides time for the PMM and CMMs to assess the underlying security or index price and submit Valid Width Quotes as well as ample time for the underlying security or index price to stabilize. After this 30 second period, the Exchange

PMM's Valid Width Quote; (ii) the Valid Width Quotes of at least two CMMs; or (iii) if neither the PMM's Valid Width Quote nor the Valid Width Quotes of two CMMs have been submitted within such timeframe, one CMM has submitted a Valid Width Quote.[19] These three requirements are intended to tie the option Opening Process to receipt of liquidity. If one of the above three conditions are not met, the Exchange will not initiate the Opening Process or continue an ongoing Opening Process if we do not have one of the three conditions (i, ii or iii); thus, a Forced Opening pursuant to proposed Rule 701(j)(5) could not occur.

The Exchange is proposing to state in proposed Rule 701(c)(2) that the underlying security, including indexes, must be open on the primary market for a certain time period for all options to be determined by the Exchange for the Opening Process to commence. The Exchange is proposing that the time period be no less than 100 milliseconds and no more than 5 seconds.[20] This proposal is intended to permit the price of the underlying security to settle down and not flicker back and forth among prices after its opening. It is common for a stock to fluctuate in price immediately upon opening; such volatility reflects a natural uncertainty about the ultimate Opening Price, while the buy and sell interest is matched. The Exchange is proposing a range of no less than 100 milliseconds and no more than 5 seconds in order to ensure that it has the ability to adjust the period for which the underlying security must be open on the primary market. The Exchange may determine that in periods of high/low volatility that allowing the underlying to be open for a longer/shorter period of time may help to ensure more stability in the marketplace prior to initiating the Opening Process.

Proposed Rule 701(c)(3) states that the PMM assigned in a particular equity option must enter a Valid Width Quote not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The PMM assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote not later than one minute after the announced market opening. Furthermore, a CMM that submits a quote pursuant to proposed Rule 701 in any option series when the PMM's quote has not been submitted shall be required to submit continuous, two-sided quotes[21] in such option series until such time as the PMM submits his/her quote, after which the Market Maker that submitted such quote shall be obligated to submit quotations pursuant to Rule 804(e). The Opening Process will stop and an option series will not open if the ABBO becomes crossed or a Valid Width Quote(s) pursuant to proposed Rule 701(c)(1) is no longer present. Once each of these conditions no longer exists, the Opening Process in the affected option series will start again pursuant to proposed Rule 701(e)–(j) as proposed in Rule 701(c)(4). All eligible opening interest will continue to be considered during the Opening Process when the process is re-started. The proposed rule reflects that the ABBO cannot be crossed because it is indicative of uncertainty in the marketplace of where the option series should be valued. In this case, the Exchange will wait for the ABBO to become uncrossed before initiating the Opening Process to ensure that there is stability in the marketplace in order to assist the Exchange in determining the Opening Price.

Reopening After a Trading Halt

This section is intended to provide information regarding the manner in which a trading halt would impact the Opening Process. Proposed Rule 701(d) states that the procedure described in this Rule may be used to reopen an option after a trading halt. The Exchange is adding that if there is a trading halt or pause in the underlying security, the Opening Process will start again irrespective of the specific times listed in proposed Rule 701(c)(1). This is because these times relate to the normal market opening in the morning.

Opening With a BBO

This next section describes when the Exchange may open with a quote on its market. Proposed Rule 701(e), ''Opening with a BBO (No Trade),'' provides that if there are no opening quotes or orders that lock or cross each other and no routable orders locking or crossing the ABBO, the system will open with an opening quote by disseminating the Exchange's best bid and offer among quotes and orders (''BBO'') that exist in the system at that time, unless all three of the following conditions exist: (i) A Zero Bid Market; (ii) no ABBO; and (iii) no Quality Opening Market. A Quality Opening Market is determined by reviewing all Valid Width Quotes and determining if the difference of the best bid of those Valid Width Quotes and the best offer of those Valid Width Quotes are of no more than a certain width.[22] The Exchange utilizes the quotes to assist in determining a fair and reasonable Opening Price. Quotes are utilized because Members are obligated to provide both a bid and sell price, providing a reasonable baseline of where the marketplace views fair value.

If all three of these conditions exist, the Exchange will calculate an Opening Quote Range pursuant to paragraph (i) and conduct the Price Discovery Mechanism or ''PDM'' pursuant to paragraph (j). The Exchange believes that when all three of these conditions exist, further price discovery is warranted to validate or perhaps update the Potential Opening Price and to attract additional interest to perhaps render an opening trade possible, because: (i) A Zero Bid Market reflects a lack of buying interest that could benefit from price discovery; (ii) the lack of an ABBO means there is no external check on the Exchange's market for that options series; and (iii) the lack of a Quality Opening Market indicates that the Exchange's market is wide. If no quotes or orders lock/cross each other, nothing matches and there can be no trade. The Exchange believes that when these conditions exist, it is difficult to arrive at a reasonable and expected price. If the provisions in proposed Rule 701(e)(i) through (iii) exist, an Opening Quote Range is calculated pursuant to proposed Rule 701(i) and thereafter, the

will initiate the Opening Process provided one CMM has submitted a Valid Width Quote since the market for the underlying security or index has had opportunity to stability. The Exchange may reduce this timeframe if it is determined that the Opening Process is taking longer to initiate than the marketplace expects. The Exchange will provide notice of the initial setting to Members. The Exchange will provide notice of the shorter time period to Members if the Exchange determines to reduce the timeframe.

[19] *See* proposed Rule 701(c)(1)(i)–(iii).

[20] The Phlx Opening Process is set at 100 milliseconds. The Exchange believes that 100 milliseconds is the appropriate amount of time given the experience with the Phlx market. The Exchange would set the timer for ISE initially at 100 milliseconds. The Exchange will issue a notice to provide the initial setting and would thereafter issue a notice if it were to change the timing, which may be between 100 milliseconds and 5 seconds. If the Exchange were to select a time not between 100 milliseconds and 5 seconds it would be required to file a rule proposal with the Commission.

[21] The Exchange has regulatory surveillances in place with respect to Market Maker continuous quoting obligations both at the opening and during the other trading sessions. *See* ISE Rule 804 regarding quoting obligations.

[22] Phlx maintains a table on its Web site with this information. *See http://www.nasdaqtrader.com/content/phlx/phlx_systemtime.pdf.* ISE will publish similar details on its Web site.

PDM in proposed Rule 701(j) will initiate.[23]

Further Opening Processes

If an opening did not occur pursuant to proposed Rule 701(e) and there are opening Valid Width Quotes, or orders, that lock or cross each other, the system will calculate the Pre-Market BBO.[24]

Proposed Rule 701(g) describes the general concept of how the system calculates the Potential Opening Price under all circumstances once the Opening Process is triggered. Specifically, the system will take into consideration all Valid Width Quotes, Opening Sweeps and orders (except All-or-None Orders that cannot be satisfied and displayed and non-displayed portions of Reserve Orders) for the option series and identify the price at which the maximum number of contracts can trade (''maximum quantity criterion''). Proposed Rule 701(h)(3)(i) and proposed Rule 701(i) at paragraphs (5) through (7) contain additional provisions related to Potential Opening Price which are discussed in further detail herein. The proposal attempts to maximize the number of contracts that can trade, and is intended to find the most reasonable and suitable price, relying on the maximization to reflect the best price.

Proposed Rule 701(g)(1) presents the scenario for more than one Potential Opening Price. When two or more Potential Opening Prices would satisfy the maximum quantity criterion and leave no contracts unexecuted, the system takes the highest and lowest of those prices and takes the mid-point; if such mid-point is not expressed as a permitted minimum price variation, it will be rounded to the minimum price variation that is closest to the closing price for the affected series from the immediately prior trading session. If there is no closing price from the immediately prior trading session, the system will round up to the minimum price variation to determine the Opening Price.

If two or more Potential Opening Prices for the affected series would satisfy the maximum quantity criterion and leave contracts unexecuted, the Opening Price will be either the lowest executable bid or highest executable offer of the largest sized side.[25] This, again, bases the Potential Opening Price on the maximum quantity that is executable. The Potential Opening Price calculation is bounded by the away market price that cannot be satisfied with the Exchange routable interest.[26] The Exchange does not open with a trade that trades through another market. This process, importantly, breaks a tie by considering the largest sized side and away markets, which are relevant to determining a fair Opening Price.

The system applies certain boundaries to the Potential Opening Price to help ensure that the price is a reasonable one by identifying the quality of that price; if a well-defined, fair price can be found within these boundaries, the option series can open at that price without going through a further PDM. Proposed Rule 701(h), ''Opening with Trade,'' provides the Exchange will open the option series for trading with a trade of Exchange interest only at the Opening Price, if certain conditions described below take place. The first condition is provided in proposed Rule 701(h)(1), the Potential Opening Price is at or within the best of the Pre-Market BBO and the ABBO. The second condition is provided for in Rule 701(h)(2), the Potential Opening Price is at or within the non-zero bid ABBO if the Pre-Market BBO is crossed. The third provision is provided for in proposed Rule 701(h)(3), where there is no ABBO, the Potential Opening Price is at or within the Pre-Market BBO which is also a Quality Opening Market.

These boundaries serve to validate the quality of the Opening Price. Proposed Rule 701(h) provides that the Exchange will open with a trade as long as it is within the defined boundaries regardless of any imbalance. The Exchange believes that since the Opening Price can be determined within a well-defined boundary and not trading through other markets, it is fair to open the market immediately with a trade and to have the remaining interest available to be executed in the displayed market. Using a boundary-based price counterbalances opening faster at a less bounded and perhaps less expected price and reduces the possibility of leaving an imbalance.

Proposed Rule 701(h)(3)(i) provides that if there is more than one Potential Opening Price which meets the conditions set forth in proposed Rule 701(h)(1), (2) or (3), where (A) no contracts would be left unexecuted and (B) any value used for the mid-point calculation (which is described in proposed Rule 701(g)) would cross either: (I) The Pre-Market BBO or (II) the ABBO, then the Exchange will open the option series for trading with an execution and use the best price which the Potential Opening Price crosses as a boundary price for the purpose of the mid-point calculation. If these aforementioned conditions are not met, an Opening Quote Range is calculated as described in proposed Rule 701(i) and the PDM, described in proposed Rule 701(j), would commence. The proposed rule explains the boundary as well as the price basis for the mid-point calculation for immediate opening with a trade, which improves the detail included in the rule. The Exchange believes that this process is logical because it seeks to select a fair and balanced price.

Proposed Rule 701(i) provides that the system will calculate an Opening Quote Range (''OQR'') for a particular option series that will be utilized in the PDM if the Exchange has not opened subject to any of the provisions described above. Provided the Exchange has been unable to open the option series under Rule 701(e) or (h), the OQR would broaden the range of prices at which the Exchange may open. This would allow additional interest to be eligible for consideration in the Opening Process. The OQR is an additional type of boundary beyond the boundaries mentioned in proposed Rule 701(g) and (h). OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. Although the Exchange applies other boundaries such as the BBO, the OQR provides a range of prices that may be able to satisfy additional contracts while still ensuring a reasonable Opening Price. The Exchange seeks to execute as much volume as is possible at the Opening Price.

Specifically, to determine the minimum value for the OQR, an amount, as defined in a table to be determined by the Exchange,[27] will be subtracted from the highest quote bid among Valid Width Quotes on the Exchange and on the away market(s), if any, except as provided in proposed Rule 701(i) paragraphs (3) and (4). To determine the maximum value for the OQR, an amount, as defined in a table to be determined by the Exchange, will be added to the lowest quote offer among Valid Width Quotes on the Exchange and on the away market(s), if any, except as provided in proposed Rule 701(i) paragraphs (3) and (4).[28] However, if one or more away markets are collectively disseminating a BBO that is not crossed, and there are Valid Width Quotes on the Exchange that

[23] OQR and PDM processes may also initiate pursuant to proposed Rule 701(h).

[24] *See* proposed Rule 701(f).

[25] *See* proposed Rule 701(g)(2).

[26] *See* proposed Rule 701(g)(3).

[27] *See* note 22 above.

[28] *See* proposed Rule 701(i)(2).

cross each other or that cross the away market ABBO, then the minimum value for the OQR will be the highest away bid.[29] In addition, the maximum value for the OQR will be the lowest away offer.[30] And if, however, there are opening quotes on the Exchange that cross each other, and there is no away market in the affected option series, the minimum value for the OQR will be the lowest quote bid among Valid Width Quotes on the Exchange, and the maximum value for the OQR will be the highest quote offer among Valid Width Quotes on the Exchange.[31]

If there is more than one Potential Opening Price possible where no contracts would be left unexecuted, any price used for the mid-point calculation (which is described in proposed Rule 701(g)(1)) that is outside of the OQR will be restricted to the OQR price on that side of the market for the purposes of the mid-point calculation. Rule 701(i)(5) continues the theme of relying on both maximizing executions and looking at the correct side of the market to determine a fair price.

Proposed Rule 701(i)(6) deals with the situation where there is an away market price involved. If there is more than one Potential Opening Price possible where no contracts would be left unexecuted and the price used for the mid-point calculation (which is described in proposed Rule 701(g)(1)) is an away market price, pursuant to proposed Rule 701(g)(3), when contracts will be routed, the system will use the away market price as the Potential Opening Price. The Exchange is seeking to execute the maximum amount of volume possible at the Opening Price. The Exchange will enter into the Order Book any unfilled interest at a price equal to or inferior to the Opening Price. It should be noted, the Exchange will not trade through an away market.

Finally, proposed Rule 701(i)(7) provides if the Exchange determined that non-routable interest can receive the maximum number of Exchange interest, after routable interest has been determined by the system to satisfy the away market, then the Potential Opening Price is the price at which the maximum number of contracts can be executed, excluding the interest which will be routed to an away market, which may be executed on the Exchange as described in proposed Rule 701(g). The system will route Public Customer interest in price/time priority to satisfy the away market. This continues the theme of trying to satisfy the maximum amount of interest during the Opening Process.

Price Discovery Mechanism

If the Exchange has not opened pursuant to proposed Rule 701(e) or (h), and after the OQR is calculated pursuant to proposed Rule 701(i), the Exchange will conduct a PDM pursuant to proposed Rule 701(j). The PDM is the process by which the Exchange seeks to identify an Opening Price having not been able to do so following the process outlined thus far herein. The principles behind the PDM are, as described above, to satisfy the maximum number of contracts possible by identifying a price that may leave unexecuted contracts. However, the PDM applies a proposed, wider boundary to identify the Opening Price and the PDM involves seeking additional liquidity.

The Exchange believes that conducting the price discovery process in these situations protects opening orders from receiving a random price that does not reflect the totality of what is happening in the markets on the opening and also further protects opening interest from receiving a potentially erroneous execution price on the opening. Opening immediately has the benefit of speed and certainty, but that benefit must be weighed against the quality of the execution price and whether orders were left unexecuted. The Exchange believes that the proposed rule strikes an appropriate balance.

The proposed rule attempts to open using Exchange interest only to determine an Opening Price, provided certain conditions contained in proposed Rule 701(i) are present to ensure market participants receive a quality execution in the opening. The proposed rule does not consider away market liquidity for purposes of routing interest to other markets until the PDM, rather the away market prices are considered for purposes of avoiding trade-throughs. As a result, the Exchange might open without routing if all of the conditions described above are met. The Exchange believes that the benefit of this process is a more rapid opening with quality execution prices.

Specifically, proposed Rule 701(j)(1) provides that the system will broadcast an Imbalance Message for the affected series (which includes the symbol, side of the imbalance (unmatched contracts), size of matched contracts, size of the imbalance, and Potential Opening Price bounded by the Pre-Market BBO) to participants, and begin an ''Imbalance Timer,'' not to exceed three seconds. The Imbalance Timer would initially be set 200 milliseconds.[32] The Imbalance Message is intended to attract additional liquidity, much like an auction, using an auction message and timer.[33] The Imbalance Timer would be for the same number of seconds for all options traded on the Exchange. Pursuant to this proposed rule, as described in more detail below, the Exchange may have up to 4 Imbalance Messages which each run its own Imbalance Timer.

Proposed Rule 701(j)(2), states that any new interest received by the system will update the Potential Opening Price. If during or at the end of the Imbalance Timer, the Opening Price is at or within the OQR the Imbalance Timer will end and the system will open with a trade at the Opening Price if the executions consist of Exchange interest only without trading through the ABBO and without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price. If no new interest comes in during the Imbalance Timer and the Potential Opening Price is at or within OQR and does not trade through the ABBO, the Exchange will open at the end of the Imbalance Timer at the Potential Opening Price. This reflects that the Exchange is seeking to identify a price on the Exchange without routing away, yet which price may not trade through another market and the quality of which is addressed by applying the OQR boundary.

Provided the option series has not opened pursuant to proposed Rule 701(j)(2),[34] pursuant to proposed Rule 701(j)(3) the system will send a second Imbalance Message with a Potential Opening Price that is bounded by the OQR (without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price) and includes away market volume in the size of the imbalance to participants; and concurrently initiate a Route Timer, not to exceed one second.[35] The Route

[29] *See* proposed Rule 701(i)(3)(i).

[30] *See* proposed Rule 701(i)(3)(ii).

[31] *See* proposed Rule 701(i)(4)(i) and (ii).

[32] The Phlx timer is set at 200 milliseconds. The Exchange will issue a notice to provide the initial setting and would thereafter issue a notice if it were to change the timing. If the Exchange were to select a time which exceeds 3 seconds it would be required file a rule proposal with the Commission.

[33] For example, *see* COOP and COLA descriptions in Phlx Rule 1098.

[34] The Exchange notes that the system would not open pursuant to proposed Rule 701(j)(2) if the Potential Opening Price is outside of the OQR or if the Potential Opening Price is at or within the OQR, but would otherwise trade through the ABBO or through the limit price(s) of interest within the OQR which is unable to be fully executed at the Potential Opening Price.

[35] The Route Timer would be a brief timer that operates as a pause before an order is routed to an away market. Currently, the Phlx Route Timer is set

Continued

Timer is intended to give Exchange users an opportunity to respond to an Imbalance Message before any opening interest is routed to away markets and, thereby, maximize trading on the Exchange. If during the Route Timer, interest is received by the system which would allow the Opening Price to be within OQR without trading through away markets and without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price, the system will open with a trade at the Opening Price and the Route Timer will simultaneously end. The system will monitor quotes received during the Route Timer period and make ongoing corresponding changes to the permitted OQR and Potential Opening Price to reflect them.[36] This proposal serves to widen the boundary of available Opening Prices, which should similarly increase the likelihood that an Opening Price can be determined. The Route Timer, like the Imbalance Timer, is intended to permit responses to be submitted and considered by the system in calculating the Potential Opening Price. The system does not route away until the Route Timer ends.

Proposed Rule 701(j)(3)(iii) provides when the Route Timer expires, if the Potential Opening Price is within OQR (without trading through the limit price(s) of interest within OQR that is unable to be fully executed at the Opening Price), the system will determine if the total number of contracts displayed at better prices than the Exchange's Potential Opening Price on away markets (''better priced away contracts'') would satisfy the number of marketable contracts available on the Exchange. This provision protects the unexecuted interest and should result in a fairer price. The Exchange will open the option series by routing and/or trading on the Exchange, pursuant to proposed Rule 701(j)(3)(iii) paragraphs (A) through (C).

Proposed Rule 701(j)(3)(iii)(A) provides if the total number of better priced away contracts would satisfy the number of marketable contracts available on the Exchange on either the buy or sell side, the system will route all marketable contracts on the Exchange to such better priced away markets as Intermarket Sweep Order (''ISO'') designated as Immediate-or-Cancel (''IOC'') order(s), and determine an opening Best Bid or Offer (''BBO'') that reflects the interest remaining on the Exchange. The system will price any contracts routed to away markets at the Exchange's Opening Price or pursuant to proposed Rule 701(j)(3)(iii)(B) or (C) described hereinafter. Routing away at the Exchange's Opening Price is intended to achieve the best possible price available at the time the order is received by the away market.

Proposed Rule 701(j)(3)(iii)(B) provides if the total number of better priced away contracts would not satisfy the number of marketable contracts the Exchange has, the system will determine how many contracts it has available at the Exchange Opening Price. If the total number of better priced away contracts plus the number of contracts available at the Exchange Opening Price would satisfy the number of marketable contracts on the Exchange on either the buy or sell side, the system will contemporaneously route a number of contracts that will satisfy interest at away markets at prices better than the Exchange Opening Price, and trade available contracts on the Exchange at the Exchange Opening Price. The system will price any contracts routed to away markets at the better of the Exchange Opening Price or the order's limit price pursuant to Rule 701(j)(vi)(C)(3)(ii). This continues with the theme of maximum possible execution of the interest on the Exchange or away markets.

Proposed Rule 701(j)(3)(iii)(C) provides if the total number of better priced away contracts plus the number of contracts available at the Exchange Opening Price plus the contracts available at away markets at the Exchange Opening Price would satisfy the number of marketable contracts the Exchange has on either the buy or sell side, the system will contemporaneously route a number of contracts that will satisfy interest at away markets at prices better than the Exchange Opening Price (pricing any contracts routed to away markets at the better of the Exchange Opening Price or the order's limit price), trade available contracts on the Exchange at the Exchange Opening Price, and route a number of contracts that will satisfy interest at other markets at prices equal to the Exchange Opening Price. This provision is intended to introduce routing to away markets potentially both at a better price than the Exchange Opening Price as well as at the Exchange Opening Price to access as much liquidity as possible to maximize the number of contracts able to be traded as part of the Opening Process. The Exchange routes at the better of the Exchange's Opening Price or the order's limit price to first ensure the order's limit price is not violated. Routing away at the Exchange's Opening Price is intended to achieve the best possible price available at the time the order is received by the away market.

Proposed Rule 701(j)(4) provides that the system may send up to two additional Imbalance Messages [37] (which may occur while the Route Timer is operating) bounded by OQR and reflecting away market interest in the volume. These boundaries are intended to assist in determining a reasonable price at which an option series might open.

This provision is proposed to further state that after the Route Timer has expired, the processes in proposed Rule 701(j)(3) will repeat (except no new Route Timer will be initiated). No new Route Timer is initiated because the Exchange believes that after the Route Timer has been initiated and subsequently expired, no further delay is needed before routing contracts if at any point thereafter the Exchange is able to satisfy the total number of marketable contracts the Exchange has by executing on the Exchange and routing to other markets.

Proposed Rule 701(j)(5), entitled ''Forced Opening,'' will describe what happens as a last resort in order to open an options series when the processes described above have not resulted in an opening of the options series. Under this process, called a Forced Opening, after all additional Imbalance Messages have occurred pursuant to proposed Rule 701(j)(4), the system will open the series executing as many contracts as possible by routing to away markets at prices better than the Exchange Opening Price for their disseminated size, trading available contracts on the Exchange at the Exchange Opening Price bounded by OQR (without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price). The system will also route contracts to away markets at prices equal to the Exchange Opening Price at their disseminated size. In this situation, the system will price any contracts routed to away markets at the better of the Exchange Opening Price or

to one second. The ISE Route Timer will also be initially set to one second. The Exchange will issue a notice to Members to provide the initial setting and would thereafter issue a notice to Members if it were to change the timing within the range of up to one second. If the Exchange were to select a time beyond one second it would be required file a rule proposal with the Commission.

[36] *See* proposed Rule 701(j)(3)(ii).

[37] The first two Imbalance Messages always occur if there is interest which will route to an away market. If the Exchange is thereafter unable to open at a price without trading through the ABBO, up to two more Imbalance Messages may occur based on whether or not the Exchange has been able to open before repeating the Imbalance Process. The Exchange may open prior to the end of the first two Imbalance Messages provided routing is not necessary.

the order's limit price. Any unexecuted contracts from the imbalance not traded or routed will be cancelled back to the entering participant if they remain unexecuted and priced through the Opening Price.

The boundaries of OQR and limit prices within the OQR are intended to ensure a quality Opening Price as well as protect the unexecutable interest entered with a limit price which may not be able to be fully executed. There is some language in the Phlx rule that is not applicable to the ISE opening because ISE does not have automatic re-pricing of orders resting in the Rulebook. Phlx's rule permits members to provide instructions to re-enter the remaining size of an unexecuted order for automatic submission as a new order, the ISE rule will not permit this submission.

Proposed Rule 701(j)(6) provides the system will execute orders at the Opening Price that have contingencies (such as without limitation, All-or-None and Reserve Orders) and non-routable orders such as ''Do-Not-Route'' or ''DNR'' Orders,[38] to the extent possible. The system will only route non-contingency Public Customer orders, except that the full volume of Public Customer Reserve Orders may route. The Exchange is adding this detail to memorialize the manner in which the system will execute orders at the opening. The Exchange desires to provide certainty to market participants as to which contingency orders will execute and which orders will route during the Opening Process.

Proposed Rule (j)(6)(i) provides the system will cancel (1) any portion of a Do-Not-Route order that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur, (2) an All-or-None Order that is not executed during the opening and is priced through the Opening Price or (3) any order that is priced through the Opening Price. All other interest will remain in the system and be eligible for trading after opening. The Exchange cancels these orders since it lacks enough liquidity to satisfy these orders on the opening yet their limit price gives the appearance that they should have been executed. The Exchange believes that participants would prefer to have these orders returned to them for further assessment rather than have these orders immediately entered onto the order book at a price which is more aggressive than the price at which the Exchange opened.

Proposed Rule 701(k) provides during the opening of the option series, where there is an execution possible, the system will give priority to Market Orders [39] first, then to resting Limit Orders [40] and quotes. The allocation provisions of ISE Rule 713 and the Supplementary Material to that rule apply with respect to other orders and quotes with the same price. The Exchange is providing certainty to market participants as to the priority scheme during the Opening Process. Market Orders will be immediately executed first because these orders have no specified price and Limit Orders will be executed thereafter in accordance with the prices specified.

Finally, proposed Rule 701(l) provides upon opening of the option series, regardless of an execution, the system disseminates the price and size of the Exchange's best bid and offer (BBO).[41] This provision simply makes known the manner in which the Exchange establishes the BBO for purposes of reference upon opening.

There are some differences between the Phlx and ISE rules. ISE has a Reserve Order and Phlx does not have this order type. With Reserve Orders, the displayed and non-displayed portions of Reserve Orders are considered for execution and in determining the Opening Price throughout the Opening Process. Today, ISE permits orders to route during regular trading, however, the Exchange does not perform away market routing during the opening rotation. With this proposal, routing is considered during the Opening Process.

With respect to the Opening Sweep, the Exchange proposes to adopt an order type at new Rule 715(t) entitled ''Opening Sweep.'' This order type is proposed to be a Market Maker order submitted for execution against eligible interest in the system during the Opening Process pursuant to Rule 701(b)(i). The Exchange believes that describing this order type within Rule 715 will provide clarity to the introduction of Opening Sweeps.

Opening Process Examples

The following examples are intended to demonstrate the Opening Process.

Example 1. Proposed Rule 701(e) Opening with an Exchange BBO (No Trade). Suppose the PMM in an option enters a quote, 2.00 (100) bid and 2.10 (100) offer and a buy order to pay 2.05 for 10 contracts is present in the system. The System also observes an ABBO is present with CBOE quoting a spread of 2.05 (100) and 2.15 (100). Given the Exchange has no interest which locks or crosses each other and does not cross the ABBO, the option opens for trading with an Exchange BBO of 2.05 (10) × 2.10 (100) and no trade. Since there is an ABBO and no Zero Bid Market, the System does not conduct the PDM and the option opens without delay.

Example 2a. Proposed Rule 701(h) Opening with Trade. Suppose the PMM enters the same quote in an option, 2.00 (100) bid and 2.10 (100) offer. This quote defines the pre-market BBO. CBOE disseminates a quote of 2.01 (100) by 2.09 (100), making up the ABBO. Firm A enters a buy order at 2.04 for 50 contracts. Firm B enters a sell order at 2.04 for 50 contracts. The Exchange opens with the Firm A and Firm B orders fully trading at an Opening Price of 2.04 which satisfies the condition defined in proposed Rule 701(h)(i), the Potential Opening Price is at or within the best of the Pre-Market BBO and the ABBO.

Example 2b. Proposed Rule 701(h) Opening with Trade. Similarly, suppose the PMM enters the same quote in an option, 2.00 (100) bid and 2.10 (100) offer. A Market Maker enters a quote of 2.00 (100) × 2.12 (100). The pre-market BBO is therefore 2.00 bid and 2.10 offer. CBOE disseminates a quote of 2.05 (100) by 2.15 (100), making up the ABBO. Firm A enters a buy order at 2.11 for 300 contracts. Firm B enters a sell order at 2.11 for 100 contracts. The option does not open for trading because the Potential Opening Price of 2.11 does not satisfy the condition defined in proposed Rule 701(h)(i), as the Potential Opening Price is outside the Pre-Market BBO. The System thereafter calculates the OQR and initiates the PDM, as discussed in proposed Rule 701(j), to facilitate the Opening Process for the option.

Example 3. Proposed Rule 701(j)(2) Price Discovery Mechanism and first iteration. Assume the set up described in Example 2b and an allowable OQR of 0.04. When the PDM is initiated, the System broadcasts an Imbalance Message. At the end of the Imbalance Timer, the option opens with an Opening Price of 2.11 because it is within OQR and the ABBO. The maximum value for OQR is the lowest quote offer of 2.10 plus 0.04.

Example 4. Proposed Rule 701(j)(3) Price Discovery Mechanism and second iteration with routing. Suppose the PMM enters a quote, 2.00 (100) bid and 2.10 (100) offer and the defined allowable OQR is 0.04. If CBOE disseminates a quote of 2.00 (100) by 2.09 (100), the away offer is better than the PMM quote. Customer A enters a routable buy order at 2.10 for 150 contracts. The PDM initiates because the Potential Opening Price (2.10) is equal to the Pre-Market BBO but outside of the ABBO. The Potential Opening

[38] A Do-Not-Route order is a market or limit order that is to be executed in whole or in part on the Exchange only. Due to prices available on another options exchange (as provided in Chapter 19 (Order Protection; Locked and Crossed Markets)), any balance of a do-not-route order that cannot be executed upon entry, or placed on the Exchange's limit order book, will be automatically cancelled. *See* Rule 715(m).

[39] A Market Orders is defined as an order to buy or sell a stated number of options contracts that is to be executed at the best price obtainable when the order reaches the Exchange. *See* ISE Rule 715(a).

[40] A Limit Order is an order to buy or sell a stated number of options contracts at a specified price or better. *See* ISE Rule 715(b).

[41] *See* proposed Rule 701(j)(F).

Price is 2.10 because there is both buy and sell interest at that price point. The System is unable to open after the first iteration of Imbalance since the Potential Opening Price is within the OQR but outside of the ABBO. The System proceeds with the PDM and initiates a Route Timer and broadcasts a second Imbalance Message (assume no additional interest is received during the imbalance period). The System opens the option for trading after the Route Timer has expired and the Imbalance Timer has completed since the Potential Opening Price is within OQR. The System routes 100 contracts of the Customer order to the better priced away offer at CBOE. The Exchange would route to CBOE at an Opening Price of 2.10 to execute against the interest at 2.09 on CBOE. The 50 options contracts open and execute on the Exchange with an Opening Price of 2.10. The Exchange routes to CBOE using the Exchange's Opening Price to ensure, if there is market movement, that the routed order is able to access any price point equal to or better than the Exchange's Opening Price.

Example 5. Proposed Rule 701(j)(5) Forced Opening. Suppose the PMM enters a quote, 2.00 (100) bid and 2.10 (100) offer and the defined allowable OQR is 0.04. A Market Maker enters a quote for 2.05 (100) × 2.14 (100). Firm A enters a buy order of 250 contracts for 2.15 which is more aggressive than the expected OQR of 2.14. The PDM initiates because the Potential Opening Price of 2.15 is outside the Pre-Market BBO (2.05 × 2.10). Assume no additional interest is received during the PDM. After the final Imbalance Timer, the System opens the option for trading with an execution of 200 contracts at an Opening Price of 2.14, which is the boundary of OQR. The residual 50 contracts from Firm A are cancelled back to the participant because the limit order price of 2.15 is priced through the Opening Price of 2.14.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[42] in general, and furthers the objectives of Section 6(b)(5) of the Act,[43] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest for the reasons stated below.

The Exchange's proposal to adopt the Phlx Opening Process is consistent with the Act because the new rule seeks to find the best price. The proposal permits the price of the underlying security to settle down and not flicker back and forth among prices after its opening. It is common for a stock to fluctuate in price immediately upon opening; such volatility reflects a natural uncertainty about the ultimate Opening Price, while the buy and sell interest is matched. The proposed rule provides for a range of no less than 100 milliseconds and no more than 5 seconds in order to ensure that it has the ability to adjust the period for which the underlying security must be open on the primary market. The Exchange may determine that in periods of high/low volatility that allowing the underlying to be open for a longer/shorter period of time may help to ensure more stability in the marketplace prior to initiating the Opening Process.

Definitions

The Exchange's proposal to adopt a ''Definitions'' section is consistent with the Act because the terms will assist market participants in understanding the meaning of terms used throughout the proposed Rule. The Exchange added the definitions to provide clarity and consistency throughout the proposed rule.

Eligible Interest

The first part of the Opening Process determines what constitutes eligible interest. The Exchange's proposal seeks to make clear what type of eligible opening interest is included. The Exchange notes that Valid Width Quotes; Opening Sweeps; and orders are included. The Exchange further notes that Market Makers may submit quotes, Opening Sweeps and orders, but quotes other than Valid Width Quotes will not be included in the Opening Process. Finally, All-or-None Orders[44] that can be satisfied, and the displayed and non-displayed portions of Reserve Orders are considered for execution and in determining the Opening Price throughout the Opening Process. The Exchange believes that defining what qualifies as eligible interest is consistent with the Act because market participants will be provided with certainty when submitting interest as to which type of interest will be considered in the Opening Process.

Opening Sweep

The Exchange believes that it is consistent with the Act to introduce the concept of an Opening Sweep and memorialize this order type within Rule 715(t). While the Opening Sweep is similar to an Opening Only Order,[45] it can be entered for the opening rotation only and any portion of the order that is not executed during the opening rotation is cancelled. An Opening Sweep may only be submitted by a Market Maker when he/she has a Valid Width Quote in the affected series[46] whereas, there is no such restriction on Opening Only Orders. The Exchange believes the addition of this order type is consistent with the Act because it provides for a specific type of order that may be entered during the Opening Process similar to Phlx for purposes of qualifying as eligible interest. The Exchange notes that this order type would be not valid outside of the opening in other trading sessions. The Exchange is providing definitive rules that concern the manner in which Opening Sweeps may be entered into the system. For example, an Opening Sweep may be entered at any price with a minimum price variation applicable to the affected series, on either side of the market, at single or multiple price level(s), and may be cancelled and re-entered. A single Market Maker may enter multiple Opening Sweeps, with each Opening Sweep at a different price level. If a Market Maker submits multiple Opening Sweeps, the system will consider only the most recent Opening Sweep at each price level submitted by such Market Maker. Unexecuted Opening Sweeps will be cancelled once the affected series is open.[47] The Exchange believes that the addition of Opening Sweep will also provide certainty to market participants as to the manner in which the system will handle such interest.

With respect to trade allocation, the proposal notes at Rule 701(b)(2) that the system will aggregate the size of all eligible interest for a particular participant category[48] at a particular price level for trade allocation purposes pursuant to ISE Rule 713. The Exchange believes that this allocation is consistent with the Act because it mirrors the current allocation process on ISE in other trading sessions.

The proposed rule notes the specific times that eligible interest may be submitted into ISE's system. The Exchange's proposed times for entering Market Maker Valid Width Quotes and Opening Sweeps (9:25 a.m. Eastern Time) and U.S. dollar-settled foreign currency options (7:25 a.m. Eastern Time) eligible to participate in the Opening Process, are consistent with the

[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78f(b)(5).

[44] *See* note 11 above.

[45] *See* ISE Rule 715(o).

[46] All Opening Sweeps in the affected series entered by a Market Maker will be cancelled immediately if that Market Maker fails to maintain a continuous quote with a Valid Width Quote in the affected series.

[47] *See* proposed ISE Rule 701(b)(1)(ii). See *also* proposed ISE Rule 715(t).

[48] ISE allocates first to Priority Customers and then to all other Members by pro-rata. This is different from Phlx which allocates to Customers first, then to market makers pro-rata and then to all others pro-rata. *See* ISE Rule 713 and Phlx Rule 1014(g)(vii).

Act because the times are intended to tie the option Opening Process to quoting in the underlying security;[49] it presumes that option quotes submitted before any indicative quotes have been disseminated for the underlying security may not be reliable or intentional. The Exchange believes these times represent a reasonable timeframe at which to begin utilizing option quotes, based on the Exchange's experience when underlying quotes start becoming available. This proposed language adds specificity to the rule regarding the submission of orders.

The Exchange's proposal at Rule 701(c)(1) describes when the Opening Process can begin with specific time-related triggers. The proposed rule, which provides that the Opening Process for an option series will be conducted on or after 9:30 a.m. Eastern Time, or on or after 7:30 a.m. Eastern Time for U.S. dollar-settled foreign currency options, provided the ABBO, if any, is not crossed and the system has received within specified time periods certain specified interest,[50] is consistent with the Act because this requirement is intended to tie the option Opening Process to receipt of liquidity. If one of the above three conditions specified in proposed Rule 701(c)(1)(i)–(iii) is not met, the Exchange will not initiate the Opening Process or continue an ongoing Opening Process. The Exchange's proposed rule considers the liquidity present on its market before initiating other processes to obtain additional pricing information. The Exchange's proposal to adopt the Phlx Opening Process is consistent with the Act because the new rule seeks to find the best price.

The Exchange's proposed rule considers the underlying security, including indexes, which must be open on the primary market for a certain time period for all options to be determined by the Exchange for the Opening Process to commence. The Exchange proposes a time period be no less than 100 milliseconds and no more than 5 seconds to permit the price of the underlying security to settle down and not flicker back and forth among prices after its opening. Since it is common for a stock to fluctuate in price immediately upon opening, the Exchange accounts for such volatility in its process. The volatility reflects a natural uncertainty about the ultimate Opening Price, while the buy and sell interest is matched. The Exchange's proposed range is consistent with the Act because it ensures that it has the ability to adjust the period for which the underlying security must be open on the primary market. The Exchange may determine that in periods of high/low volatility that allowing the underlying to be open for a longer/shorter period of time may help to ensure more stability in the marketplace prior to initiating the Opening Process.

The Exchange's proposal at Rule 701(c)(3) requires the PMM assigned in a particular equity option to enter a Valid Width Quote not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The PMM assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote also not later than one minute after the announced market opening.

Furthermore, the Exchange proposes that a CMM that submits a quote pursuant to proposed Rule 701 in any option series when the PMM's quote has not been submitted shall be required to submit continuous, two-sided quotes in such option series until such time as the PMM submits his/her quote, after which the Market Maker that submitted such quote shall be obligated to submit quotations pursuant to Rule 804(e). This proposal is consistent with the Act because the Exchange will not open if the ABBO becomes crossed or a Valid Width Quote(s) pursuant to proposed Rule 701(c)(1) is no longer present. Instead the process would restart and all eligible opening interest will continue to be considered during the Opening Process when the process is re-started. The Exchange's proposal is consistent with the Act and promotes just and equitable principles of trade because the rule reflects that the ABBO cannot be crossed because it is indicative of uncertainty in the marketplace of where the option series should be valued. The Exchange will wait for the ABBO to become uncrossed before initiating the Opening Process to ensure that there is stability in the marketplace in order to assist the Exchange in determining the Opening Price.

Reopening After a Trading Halt

In order to provide certainty to market participants in the event of a trading halt, the Exchange provides in its proposal information regarding the manner in which a trading halt would impact the Opening Process. Proposed Rule 701(d) provides if there is a trading halt or pause in the underlying security, the Opening Process will start again irrespective of the specific times listed in Rule 701(c)(1). The Exchange's proposal to restart in the event of a trading halt is consistent with the Act and promotes just and equitable principles of trade because the proposed rule ensures that there is stability in the marketplace in order to assist the Exchange in determining the Opening Price.

Opening With a BBO

The Exchange's proposed rule accounts for a situation where there are no opening quotes or orders that lock or cross each other and no routable orders locking or crossing the ABBO. In this situation, the system will open with an opening quote by disseminating the Exchange's best bid and offer among quotes and orders (''BBO'') that exist in the system at that time, unless all three of the following conditions exist: (i) A Zero Bid Market; (ii) no ABBO; and (iii) no Quality Opening Market.[51] The Exchange utilizes the quotes to assist in determining a fair and reasonable Opening Price, which is consistent with the Act because Members are obligated to provide both a bid and sell price. The Exchange believes that this measure provides a reasonable baseline of where the marketplace views fair value.

If all three of these conditions exist, the Exchange will calculate an OQR pursuant to paragraph (i) and conduct the PDM pursuant to paragraph (j). This approach is consistent with the Act because the when all three of these conditions exist, further price discovery is warranted to validate or perhaps update the Exchange's BBO and to attract additional interest to perhaps render an opening trade possible. The Exchange notes that a Zero Bid Market reflects a lack of buying interest to assist in validating a reasonable opening BBO, the lack of an ABBO means there is no external check on the Exchange's market for that options series; and the lack of a Quality Opening Market indicates that the Exchange's market is wide. For these reasons, the Exchange believes that when these conditions exist, it is difficult to determine if the Exchange BBO is reasonable and therefore an OQR is calculated pursuant to proposed Rule 701(i) and thereafter, the PDM in proposed Rule 701(j) will initiate.

The Exchange believes that proposed rule promotes just and equitable principles of trade, because the proposed conditions involving Zero Bid Markets, no ABBO and no Quality

[49] For purposes of this rule, the underlying security can also be an index.

[50] See proposed Rule 701(c)(1)(i)–(iii).

[51] The Exchange nots herein that a Quality Opening Market is determined by reviewing all Valid Width Quotes and determining if the difference of the best bid of those Valid Width Quotes and the best offer of those Valid Width Quotes are of no more than a certain width.

Opening Market trigger the PDM rather than an immediate opening in order to validate the Opening Price against away markets or by attracting additional interest to address the specific condition. This is consistent with the Act because it should avoid opening executions in very wide or unusual markets where an opening execution price cannot be validated.

Further Opening Processes and Price Discovery Mechanism

The proposed rule promotes just and equitable principles of trade because in arriving at the Potential Opening Price the rule considers the maximum number of contracts that can be executed, which results in a price that is logical and reasonable in light of away markets and other interest present in the system. As noted herein, the Exchange's Opening Price is bounded by the OQR without trading through the limit price(s) of interest within OQR which is unable to fully execute at the Opening Price in order to provide participants with assurance that their orders will not be traded through. Although the Exchange applies other boundaries such as the BBO, the OQR provides a range of prices that may be able to satisfy additional contracts while still ensuring a reasonable Opening Price. The Exchange seeks to execute as much volume as is possible at the Opening Price. When choosing between multiple Opening Prices when some contracts would remain unexecuted, using the lowest bid or highest offer of the largest sized side of the market promotes just and equitable principles of trade because it uses size as a tie breaker. The Exchange's method for determining the Potential Opening Price and Opening Price is consistent with the Act because the proposed process seeks to discover a reasonable price and considers both interest present in ISE's system as well as away market interest. The Exchange's method seeks to validate the Opening Price and avoid opening at aberrant prices. The rule provides for opening with a trade, which is consistent with the Act because it enables an immediate opening to occur within a certain boundary without need for the price discovery process. The boundary provides protections while still ensuring a reasonable Opening Price.

The proposed rule considers more than one Potential Opening Price, which is consistent with the Act because it forces the Potential Opening Price to fall within the OQR boundary, thereby providing price protection. Specifically, the mid-point calculation balances the price among interest participating in the Opening when there is more than one price at which the maximum number of contracts could execute. Limiting the mid-point calculation to the OQR when a price would otherwise fall outside of the OQR ensures the final mid-point price will be within the protective OQR boundary. If there is more than one Potential Opening Price possible where no contracts would be left unexecuted and any price used for the mid-point calculation is an away market price when contracts will be routed, the system will use the away market price as the Potential Opening Price.

The PDM reflects what is generally known as an imbalance process and is intended to attract liquidity to improve the price at which an option series will open as well as to maximize the number of contracts that can be executed on the opening. This process will only occur if the Exchange has not been able to otherwise open an option series utilizing the other processes available in proposed Rule 701. The Exchange believes the process presented in the PDM is consistent with just and equitable principles of trade because the process applies a proposed, wider boundary to identify the Opening Price and seeks additional liquidity. The PDM also promotes just and equitable principles of trade by taking into account whether all interest can be fully executed, which helps investors by including as much interest as possible in the Opening Process. The Exchange believes that conducting the price discovery process in these situations protects opening orders from receiving a random price that does not reflect the totality of what is happening in the markets on the opening and also further protects opening interest from receiving a potentially erroneous execution price on the opening. Opening immediately has the benefit of speed and certainty, but that benefit must be weighed against the quality of the execution price and whether orders were left unexecuted. The Exchange believes that the proposed rule strikes an appropriate balance.

It is consistent with the Act to not consider away market liquidity, *i.e.* away market volume, until the PDM occurs because this proposed process provides for a swift, yet conservative opening. The Exchange is bounded by the Pre-Market BBO when determining an Opening Price. The away market prices would be considered, albeit not immediately. It is consistent with the Act to consider interest on the Exchange prior to routing to an away market because the Exchange is utilizing the interest currently present on its market to determine a quality opening price. The Exchange will attempt to match interest in the system, which is within the OQR, and not leave interest unsatisfied that was otherwise at that price. The Exchange will not trade-through the away market interest in satisfying this interest at the Exchange. The proposal attempts to maximize the number of contracts that can trade, and is intended to find the most reasonable and suitable price, relying on the maximization to reflect the best price.

With respect to the manner in which the Exchange sends an Imbalance Message as proposed within Rule 701(j)(1), the Imbalance Message is intended to attract additional liquidity, much like an auction, using an auction message and timer. The Imbalance Timer is consistent with the Act because it would provide a reasonable time for participants to respond to the Imbalance Message before any opening interest is routed to away markets and, thereby, maximize trading on the Exchange. The Imbalance Timer would be for the same number of seconds for all options traded on the Exchange. This process will repeat, up to four iterations, until the options series opens. The Exchange believes that this process is consistent with the Act because the Exchange is seeking to identify a price on the Exchange without routing away, yet which price may not trade through another market and the quality of which is addressed by applying the OQR boundary.

Proposed Rule 701(j)(3)(iii)(C) provides if the total number of better priced away contracts plus the number of contracts available at the Exchange Opening Price plus the contracts available at away markets at the Exchange Opening Price would satisfy the number of marketable contracts the Exchange has on either the buy or sell side, the system will contemporaneously route a number of contracts that will satisfy interest at away markets at prices better than the Exchange Opening Price (pricing any contracts routed to away markets at the better of the Exchange Opening Price or the order's limit price), trade available contracts on the Exchange at the Exchange Opening Price, and route a number of contracts that will satisfy interest at other markets at prices equal to the Exchange Opening Price. This provision is consistent with the Act because it considers routing to away markets potentially both at a better price than the Exchange Opening Price as well as at the Exchange Opening Price to access as much liquidity as possible to maximize the number of contracts able to be traded as part of the Opening Process. The Exchange routes at the

better of the Exchange's Opening Price or the order's limit price to first ensure the order's limit price is not violated. Routing away at the Exchange's Opening Price is intended to achieve the best possible price available at the time the order is received by the away market.

Proposed Rule 701(j)(5), entitled ''Forced Opening,'' provides for the situation where, as a last resort, in order to open an options series when the processes described above have not resulted in an opening of the options series. Under a Forced Opening, the system will open the series executing as many contracts as possible by routing to away markets at prices better than the Exchange Opening Price for their disseminated size, trading available contracts on the Exchange at the Exchange Opening Price bounded by OQR (without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price). The system will also route contracts to away markets at prices equal to the Exchange Opening Price at their disseminated size. In this situation, the system will price any contracts routed to away markets at the better of the Exchange Opening Price or the order's limit price. Any unexecuted contracts from the imbalance not traded or routed will be cancelled back to the entering participant if they remain unexecuted and priced through the Opening Price. The Exchange believes that this process is consistent with the Act because after attempting to open by soliciting interest on ISE and considering other away market interest and considering interest responding to Imbalance Messages, the Exchange could not otherwise locate a fair and reasonable price with which to open options series.

The Exchange's proposal to memorialize the manner in which proposed rule will cancel and prioritize interest provides certainty to market participants as to the priority scheme during the Opening Process.[52] The Exchange's proposal to execute Market Orders first and then Limit Orders is consistent with the Act because these orders have no specified price and Limit Orders will be executed thereafter in accordance with the prices specified due to the nature of these order types. This is consistent with the manner in which these orders execute after the opening today.

Finally, proposed Rule 701(l) provides upon opening of the option series, regardless of an execution, the system dissemination of the price and size of the Exchange's BBO is consistent with the Act because it clarifies the manner in which the Exchange establishes the BBO for purposes of reference upon opening.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal does not change the intense competition that exists among the options markets for options business including on the opening. Nor does the Exchange believe that the proposal will impose any burden on intra-market competition; the Opening Process involves many types of participants and interest.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–ISE–2017–02 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2017–02. 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–ISE–2017–02 and should be submitted on or before February 23, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02182 Filed 2–1–17; 8:45 am]

BILLING CODE 8011–01–P

[52] *See* proposed Rule 701(j)(6)(i) and (k).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79891; File No. SR–BOX–2017–03]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 8040 (Obligations of Market Makers)

January 27, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on January 17, 2017, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Rule 8040 (Obligations of Market Makers). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BOX Rule 8040(a)(9) (Obligations of Market Makers) to amend the provision pertaining to trades that are more than $0.25 below parity. Additionally, the Exchange proposes to eliminate Rule 8040(a)(10), the provision providing for bids (offers) to be no more than $1 lower (higher) than the last preceding transaction plus or minus the aggregate change in the last sale price of the underlying (''the one point rule'').

First, the Exchange proposes to eliminate the one point rule as various market changes have rendered the rule obsolete and unnecessary. For example, Market Makers are subject to various quotation requirements, including bid/ask quote width requirements contained in Rule 8050. The Exchange also has an obvious error rule that contains provisions on erroneous pricing errors (*e.g.,* 7170) and has in place certain price check parameters that will not permit the automatic execution of certain orders if the execution would take place at prices inferior to the national best bid/offer (*e.g.,* Rule 7290).

Second, the Exchange is proposing to retain Rule 8040(a)(9) as a guideline but to modify it to provide that an amount larger than $0.25 may be appropriate considering the particular market conditions (not just unusual conditions as the rule currently states). Currently, Market Makers are expected ordinarily, except in unusual market conditions, to refrain from purchasing a call option or a put option at a price more than $0.25 below parity. In the case of call options, parity is measured by the bid in the underlying security, and in the case of put options, parity is measured by the offer in the underlying security (''the parity rule''). The Exchange proposes to revise the rule to provide that the $0.25 guideline may be increased, or the rule waived, by the Exchange on a series-by-series basis.[3] The Exchange believes that revising the $0.25 parity rule in this manner modernizes the guideline to reflect market changes and will provide more flexibility to take into consideration the particular trading in a security, including but not limited to the underlying market price, market conditions, and applicable minimum bid/ask width requirements for a given options series. Additionally, the Exchange believes that the proposed change to Rule 8040(a)(9) harmonizes the Exchange's parity rule with other options exchanges' parity rules in the industry.[4]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular in that the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest, because it will eliminate the outdated one point rule and update the parity rule to incorporate more flexibility and recognize changing market conditions. As discussed above, the Exchange believes the proposed change to Rule 8040(a)(9) is reasonable and appropriate, as other options exchanges have similar rules currently in place at their respective exchanges.[8] Further, the Exchange believes the proposed elimination of Rule 8040(a)(10) is reasonable and appropriate as another exchange in the industry filed to remove the language as the rule was obsolete and unnecessary.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as discussed above, the Exchange notes that the proposed rule change is substantially similar to rules at other options exchanges in the industry. As discussed above, the Exchange believes that the proposed change to revise the parity rule and eliminate the one point rule is consistent with the market maker obligations at other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6) thereunder.[11]

[3] The Exchange will provide Participants with notice, via Regulatory Circular, if the rule will be waived.

[4] *See* Chicago Board Options Exchange (''CBOE'') Rule 8.7(.02); International Securities Exchange (''ISE'') Rule 803(a)(1); Miami International Securities Exchange LLC (''MIAX'') Rule 603(a).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] *See supra* note 4.

[9] *See* Securities Exchange Release No. 60897 (October 28, 2009), 74 FR 57217 (November 4, 2009) (Notice of Filing and Immediate Effectiveness SR–ISE–2009–85).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the changes to be implemented immediately to update certain Market Maker guidelines to better reflect current market conditions. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2017–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2017–03. 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 Number SR–BOX–2017–03, and should be submitted on or before February 23, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–02184 Filed 2–1–17; 8:45 am]

BILLING CODE 8011–01–P

of filing of the proposed rule change, or such shorter time as designated by the Commission.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15027 and #15028]

Georgia Disaster #GA–00089

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4294–DR), dated 01/25/2017.

Incident: Severe Storms, Tornadoes, and Straight-line Winds.

Incident Period: 01/02/2017.

Effective Date: 01/25/2017.

Physical Loan Application Deadline Date: 03/27/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 10/25/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/25/2017, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Dougherty.

Contiguous Counties (Economic Injury Loans Only):

Georgia: Baker, Calhoun, Lee, Mitchell, Terrell, Worth.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.000
Homeowners Without Credit Available Elsewhere	1.500
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	3.125
Non-Profit Organizations With Credit Available Elsewhere	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15027C and for economic injury is 150280.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–02231 Filed 2–1–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15025 and #15026]

Mississippi Disaster #MS–00097

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4295–DR), dated 01/25/2017.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 01/20/2017 through 01/21/2017.

Effective Date: 01/25/2017.

Physical Loan Application Deadline Date: 03/27/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 10/25/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/25/2017, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Forrest, Lamar, Lauderdale, Perry.

Contiguous Counties (Economic Injury Loans Only):

Mississippi: Clarke, Covington, George, Greene, Jasper, Jefferson Davis, Jones, Kemper, Marion, Neshoba, Newton, Pearl River, Stone, Wayne.

Alabama: Choctaw, Sumter.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.000
Homeowners Without Credit Available Elsewhere	1.500
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	3.125
Non-Profit Organizations With Credit Available Elsewhere	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15025C and for economic injury is 150260.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–02234 Filed 2–1–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15031 and #15032]

Oregon Disaster #OR–00084

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance only for the State of Oregon (FEMA–4296–DR), dated 01/25/2017.

Incident: Severe Winter Storm and Flooding.

Incident Period: 12/14/2016 through 12/17/2016.

Effective Date: 01/25/2017.

Physical Loan Application Deadline Date: 03/27/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 10/25/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/25/2017, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Josephine, Lane.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15031B and for economic injury is 15032B.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–02232 Filed 2–1–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15029 and #15030]

Georgia Disaster #GA–00091

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA–4294–DR), dated 01/25/2017.

Incident: Severe Storms, Tornadoes, and Straight-line Winds.

Incident Period: 01/02/2017.

Effective Date: 01/25/2017.

Physical Loan Application Deadline Date: 03/27/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 10/25/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/25/2017, Private Non-Profit organizations that provide essential

services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Baker, Calhoun, Dougherty, Early, Mitchell, Turner, Worth.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15029C and for economic injury is 15030C.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017–02230 Filed 2–1–17; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 9871]

30-Day Notice of Proposed Information Collection: Exchange Programs Alumni Web Site Registration

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to March 6, 2017.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Carlyn Messinger, Junior Program Officer in the Office of Alumni Affairs, who may be reached on 202–632–6186 or at *MessingerCB@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Exchange Programs Alumni Web site Registration.
- *OMB Control Number:* 1405–0192.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/P/A.
- *Form Number:* DS–7006.
- *Respondents:* Exchange program alumni and current participants of U.S. government-sponsored exchange programs.
- *Estimated Number of Respondents:* 5,000 for full form, and 41,000 for expedited form.
- *Estimated Number of Responses:* 46,000.
- *Average Time per Response:* 10 minutes for response to the full form or 2 minutes for response to the expedited form.
- *Total Estimated Burden Time:* 2,200 hours (reduction of approximately 30% since last approval).
- *Frequency:* One time per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The International Exchange Alumni Web site requires information to process users' voluntary request for participation in the International Exchange Alumni Web site. Other than contact and exchange program information, which is required for Web site registration, all other information is provided on a voluntary basis. Participants also have the option of restricting access to their information.

Respondents to this registration form are U.S. government-sponsored exchange program participants and alumni. Alumni Affairs collects data from users not only to verify their status or participation in a program, but to help alumni network with one another and aid Embassy staff in their alumni outreach. Once a user account is activated, the same information may be used for contests, competitions, and other public diplomacy initiatives in support of Embassy and foreign policy goals.

Methodology: Information provided for registration is collected electronically via the Alumni Web site, *alumni.state.gov*.

Additional Information: Since the previous approval, improvements made to the Web site have decreased the burden to respondents by 30%. International Exchange Alumni is a secure, encrypted Web site.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–02243 Filed 2–1–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9824]

30-Day Notice of Proposed Information Collection: PEPFAR Program Expenditures

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The

purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to *March 6, 2017.*

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Irum Zaidi, 1800 G St. NW., Suite 10300, SA–22, Washington DC 20006, who may be reached on 202–663–2588 or at *ZaidiIF@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* PEPFAR Program Expenditures.
- *OMB Control Number:* 1405–0208.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Office of the U.S. Global AIDS Coordinator and Health Diplomacy (S/GAC).
- *Form Number:* DS–4213.
- *Respondents:* Recipients of U.S. government funds appropriated to carry out the President's Emergency Plan for AIDS Relief (PEPFAR).
- *Estimated Number of Respondents:* 1,627.
- *Estimated Number of Responses:* 1,627.
- *Average Time per Response:* 24 hours.
- *Total Estimated Burden Time:* 39,048 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The US President's Emergency Plan for AIDS Relief (PEPFAR) was established through enactment of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Pub. L. 108–25), as amended by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (Pub. L. 110–293) (HIV/AIDS Leadership Act) to support the global response to HIV/AIDS. In order to improve program monitoring, the interagency Finance and Economics Work Group supporting PEPFAR has added reporting of expenditures by program area to the current routine reporting of program results for the annual report. Data are collected from implementing partners in countries with PEPFAR programs using a standard tool (DS–4213) via an electronic web-based interface into which users directly input data. These data are analyzed to produce mean and range in expenditures by partner per result/achievement for all PEPFAR program areas. These analyses then feed into partner and program reviews at the country level for monitoring and evaluation on an ongoing basis. Summaries of these data provide key information about program costs under PEPFAR on a global level. Applying expenditure results will improve strategic budgeting, identification of efficient means of delivering services, accuracy in defining program targets, and will inform allocation of resources to ensure the program is accountable and using public funds for maximum impact.

Methodology: Data will be collected in a web-based interface available to all partners receiving funds under PEPFAR. To minimize the respondents' reporting burden and need for information technology investment, a new module capturing expenditure data was added to an already functional system. System upgrades now allow collection of the same information but no longer require uploading and downloading of spreadsheet templates. This approach has minimized U.S. government start-up costs for the technology and will make the data collection processes more efficient.

Max L. Aguilar,

Deputy Coordinator for Management, Budget, and Operations, Office of the U.S. Global AIDS Coordinator and Health Diplomacy, Department of State.

[FR Doc. 2017–02168 Filed 2–1–17; 8:45 am]

BILLING CODE 4710–10–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36087]

West Branch Intermediate Holdings, LLC and Continental Rail LLC—Continuance in Control Exemption—New Mexico Central Railroad, LLC

West Branch Intermediate Holdings, LLC (West Branch) and Continental Rail LLC (Continental) have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) for West Branch to continue in control of, and Continental to manage, New Mexico Central Railroad, LLC (NMCR), upon NMCR's becoming a Class III rail carrier. West Branch is a noncarrier limited liability company that currently controls Delta Southern Railroad, Inc. (Delta), a Class III carrier. Continental is a noncarrier formed for the purpose of managing and operating short line railroads.

This transaction is related to a concurrently filed verified notice of exemption in *New Mexico Central Railroad—Acquisition & Operation Exemption—Southwestern Railroad, Whitewater Division,* Docket No. FD 36085, in which NMCR has filed for authority under 49 CFR 1150.31 to acquire and operate certain Southwestern assets. In particular, NMRC will acquire Southwestern's leasehold interest in a line between Deming (MP 1134) and Rincon (MP 1080) and Southwestern's ownership interest in lines: Between Deming (MP 0.0) and Peruhill (MP 5+3,763 feet); between Peruhill (MP 5+3,763 feet) and Whitewater (MP 30+2,972 feet); between Whitewater (near MP 30+2,972 feet) and the Tyrone Industrial Spur at Burro Mountain Jct. (near MP 33+5,256 feet); between Whitewater (MP 0+0750 feet) and Santa Rita (MP 16+1,500 feet); and between Hannover, Jct. (MP 14+1,345.4 feet) and the connection line at the Fierro Industrial Spur at the Sharon Steel Plant (near MP 6+1,804 feet). The total Southwestern mileage NMCR will acquire (by purchase or lease) and operate is approximately 116 miles.[1]

[1] In Docket No. FD 36084, West Branch and Continental have invoked the class exemption at 49 CFR 1180.2(d)(2) for West Branch to acquire control

The applicants certify that: (1) The carriers that are the subject of this notice do not connect with each other; (2) that this transaction is not part of a series of anticipated transactions that would connect these rail carriers with each other; and (3) the transaction does not involve a Class I carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

The earliest the transaction could be consummated is February 16, 2017, the effective date of the exemption (30 days after the verified notice of exemption was filed). The parties expect to consummate the transaction on or about February 17, 2017.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by February 9, 2017 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36087, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

Board decisions and notices are available on our Web site at *WWW.STB.GOV.*

Decided: January 30, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2017–02227 Filed 2–1–17; 8:45 am]

BILLING CODE 4915–01–P

of, and for Continental to manage, the following Class III rail carriers: Cimarron Valley Railroad, L.C., Clarksdale Arizona Central Railroad, L.C., and Wyoming and Colorado Railroad Company, Inc.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36067]

New Orleans Public Belt Railroad—Temporary Trackage Rights Exemption—Illinois Central Railroad Company

On January 12, 2017, New Orleans Public Belt Railroad (NOPB), a Class III rail carrier, filed a request under 49 CFR 1180.2(d)(8) for a one-year extension of temporary overhead trackage rights over a line of railroad of the Illinois Central Railroad Company (IC), over two segments of IC's rail lines as follows: (1) IC's McComb Subdivision, between IC's connection with the Kansas City Southern Railway Company (KCS) at or near IC milepost 906.4 at East Bridge Junction in Shrewsbury, La., and IC milepost 900.8 at Orleans Junction in New Orleans, La. (approximately 5.6 miles); and (2) IC's Baton Rough Subdivision, between IC milepost 444.2 at Orleans Junction and IC milepost 443.5 at Frellsen Junction in New Orleans, La. (approximately 0.7 miles), for a total distance of approximately 6.3 miles (the Line).

NOPB was authorized to acquire the temporary overhead trackage rights over the Line by notice of exemption served and published in the **Federal Register** on October 14, 2016 (81 FR 71,161). According to NOPB, the temporary trackage rights permit it to interchange traffic with the Kansas City Southern Railway Company (KCS) on KCS trackage in New Orleans on a trial basis.

Under 49 CFR 1180.2(d)(8), the parties may, prior to the expiration of the temporary trackage rights, file a request for a renewal of the temporary rights for an additional period of up to one year, including the reasons for the extension. NOPB states that the temporary trackage rights are scheduled to expire on January 31, 2017. NOPB further states that the initial operations have been successful, and NOPB and IC have agreed to extend the rights for an additional year, to January 31, 2018, to confirm the longer-term feasibility of operations.

NOPB filed a copy of the amendment to the temporary trackage rights agreement with its request for the one-year extension. NOPB also acknowledges that any further extension of these rights, or a conversion of the rights from temporary to permanent, would require a separate notice of exemption filing pursuant to 49 CFR 1180.4(g).

In accordance with 49 CFR 1180.2(d)(8), NOPB's temporary trackage rights over the Line will be extended for one year and will expire on January 31, 2018. The employee protective conditions imposed in the October 14, 2016 notice remain in effect.

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV.*''

Decided: January 27, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2017–02217 Filed 2–1–17; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36091]

David L. Durbano, Wyoming and Colorado Railroad Company, Inc., and Saratoga Railroad, LLC—Corporate Family Transaction

David L. Durbano (Durbano), an individual, Saratoga Railroad, LLC (Saratoga), a noncarrier corporation wholly owned by Durbano, and Wyoming and Colorado Railroad Company, Inc. (WYCO), a Class III rail carrier controlled by Durbano,[1] (collectively, the Parties) have filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a corporate family transaction in which: (1) Saratoga will acquire from WYCO and operate an approximately 23.71-mile rail line between milepost 0.57 at Walcott and milepost 24.28 at Saratoga in Carbon County, Wyo. (the EB Line); and (2) Durbano will continue in control of Saratoga when it becomes a Class III rail carrier, upon Saratoga's acquisition of the EB line, while remaining in control of WYCO and Durbano's three other Class III rail carriers: Southwestern Railroad, Inc. (SWRR), Cimarron Valley

[1] Durbano has controlled WYCO since WYCO acquired a 131.52-mile line from Union Pacific Railroad Company (UP) in 1987. *See Wyo. & Colo. R.R.—Acquis. & Operation Exemption—Certain Lines of Union Pac. R.R.,* FD 31140 (ICC served Nov. 30, 1987) (1987 Acquisition). The line being acquired by Saratoga was part of the l987 Acquisition and is known as Encampment Branch or the EB Line. The remainder of the former UP line acquired in the 1987 Acquisition has either been abandoned or sold through a series of proceedings. *See Wyo. & Colo. R.R.—Aban. Exemption—in Jackson Cty., Colo.,* AB 307 (Sub-No. 1X) (ICC served June 25, 1990); *Wyo. & Colo. R.R.—Aban. Exemption—in Jackson Cty., Colo.,* AB 307 (Sub-No. 2X) (ICC served May 19, 1995 and Sept. 15, 1995); *Wyo. & Colo. R.R.—Aban. Exemption—in Albany Cty., Wyo.,* AB 307 (Sub-No. 3X) (STB served Sept. 16, 1996, as modified by subsequent decisions served on May 16, 2003, and December 31, 2003;) *Wyo. & Colo. R.R.—Aban. Exemption—in Albany Cty., Wyo.,* AB 307 (Sub-No. 4X) (STB served Oct. 10, 2003, as modified by subsequent decisions served on Nov. 10, 2003, and Feb. 27, 2009).

Railroad, L.C. (CVR), and Clarkdale Arizona Central Railroad, L.C. (CACR).

According to the Parties, Durbano, individually and through his control and ownership of Western Group and Snowy Range Cattle Company, both noncarrier holding companies, currently owns and controls WYCO, SWRR, CVR and CACR.[2] WYCO operates in Oregon doing business as the Oregon Eastern Railroad. WYCO owns but does not operate the EB Line in Wyoming.[3] SWRR operates in New Mexico; CVR operates in Kansas, Oklahoma, and Colorado; and CACR operates in Arizona. The Parties state that, because Durbano owns and controls all four rail carriers, Durbano has not entered into any agreements or written instruments to undertake the proposed transaction.

The Parties state that the purpose of this transaction is to undertake a corporate reorganization for the eventual purpose of selling certain assets or stock of various Durbano-controlled railroad companies, except for Saratoga.[4] Saratoga certifies that its annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

Unless stayed, the exemption will be effective on February 16, 2017 (30 days after the verified notice was filed).

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The Parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 9, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36091, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

According to the Parties, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV*.''

Decided: January 30, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2017–02220 Filed 2–1–17; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36085]

New Mexico Central Railroad, LLC—Acquisition and Operation Exemption—Southwestern Railroad, Inc., Whitewater Division

New Mexico Central Railroad, LLC (NMCR),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate certain lines of railroad in New Mexico (the Lines) collectively referred to as the Whitewater Division, currently operated and owned or leased by Southwestern Railroad, Inc. (Southwestern). In particular, NMRC will acquire Southwestern's leasehold interest in a line between Deming (MP 1134) and Rincon (MP 1080) and ownership interest in lines: Between Deming (MP 0.0) and Peruhill (MP 5+3,763 feet); between Peruhill (MP 5+3,763 feet) and Whitewater (MP 30+2,972 feet); between Whitewater (near MP 30+2,972 feet) and the Tyrone Industrial Spur at Burro Mountain Jct. (near MP 33+5,256 feet); between Whitewater (MP 0+0750 feet) and Santa Rita (MP 16+1,500 feet); and between Hannover, Jct. (MP 14+1,345.4 feet) and the connection line at the Fierro Industrial Spur at the Sharon Steel Plant (near MP 6+1,804 feet). The total Southwestern mileage NMCR will acquire (by purchase or lease) and operate is approximately 116 miles.[2]

On the same day NMCR filed its verified notice of exemption, West Branch and Continental also filed a verified notice of exemption in *West Branch Intermediate Holdings & Continental Rail—Continuance in Control Exemption—New Mexico Central Railroad,* Docket No. FD 36087, for West Branch to acquire and for Continental to manage NMCR upon NMCR's becoming a Class III carrier.[3]

NMCR has executed a letter of intent for it to purchase the Lines. NMCR and Southwestern are currently negotiating a purchase and sale agreement governing the purchase of the Lines as well as certain other assets. The parties expect to reach an agreement shortly, which NMCR states will not contain an interchange agreement.

NMCR certifies that its projected annual revenues resulting from the transaction will not result in its becoming a Class I or Class II rail carrier. NMCR notes, however, that its annual operating revenues will exceed $5 million. Accordingly, in compliance with 49 CFR 1150.32(e), NMCR submitted a letter on December 16, 2016, certifying that it posted the required 60-day labor notice of this transaction at the Southwestern employees' workplace at Deming. NMCR states that the notice was not served on the national offices of labor unions with employees who work on

[2] Mr. Durbano also owns, and Western Group manages, Verde Canyon Railroad, LLC, an intrastate passenger excursion railroad not subject to the Board's jurisdiction.

[3] The EB Line was authorized for abandonment in 2006 and the Parties state that the tracks, ties, and other track materials were salvaged. *See Wyo. & Colo. R.R.—Aban. Exemption—in Carbon Cty., Wyo.,* AB 307 (Sub-No. 6X) (STB served May 31, 2006). The Parties state that, for a number of reasons, WYCO never consummated the abandonment of the EB Line and never filed a notice of consummation. As a result, WYCO's abandonment authority expired and the corridor remains a line of railroad subject to the Board's jurisdiction.

[4] *See W. Branch & Cont'l Rail—Acquis. of Control Exemption—Cimarron Valley R.R.,* Docket No. FD 36084; *N.M. Cent. R.R.—Acquis. & Operation Exemption—Sw. R.R., Whitewater Div.,* Docket No. FD 36085; and *W. Branch Intermediate Holdings & Cont'l Rail—Continuance in Control Exemption—N.M. Cent. R.R.,* Docket No. FD 36087.

[1] NMCR is a newly established entity owned by West Branch Intermediate Holdings, LLC (West Branch), and managed by Continental Rail LLC (Continental). West Branch currently controls an existing Class III carrier, Delta Southern Railroad, Inc. (Delta).

[2] Southwestern also leases and operates a BNSF Railway Company (BNSF) line known as the Carlsbad Division, which consists of approximately 227.6 miles of railroad linking Clovis, Carlsbad, and Loving, N.M. Southwestern recently petitioned for an exemption to discontinue service over the Carlsbad Division. *See Sw. R.R.—Discontinuance of Serv. Exemption—in Curry, Roosevelt, Chaves & Eddy Ctys., N.M.,* AB 1251X (filed Jan. 17, 2017).

[3] In Docket No. FD 36084, West Branch and Continental have invoked the class exemption at 49 CFR 1180.2(d)(2) for West Branch to acquire control and for Continental to manage the following Class III rail carriers: Cimarron Valley Railroad, L.C., Clarksdale Arizona Central Railroad, L.C., and Wyoming and Colorado Railroad Company, Inc.

the affected lines because there are no unionized employees employed by Southwestern.

The earliest the transaction could be consummated is February 16, 2017, and the parties expect to consummate the transaction at that time.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by February 9, 2017 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36084, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

According to NMCR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at *WWW.STB.GOV.*

Decided: January 30, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2017–02284 Filed 2–1–17; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36084]

West Branch Intermediate Holdings, LLC and Continental Rail LLC—Acquisition of Control Exemption—Cimarron Valley Railroad, L.C., Clarkdale Arizona Central Railroad, L.C., Wyoming and Colorado Railroad Company, Inc.

West Branch Intermediate Holdings, LLC (West Branch) and Continental Rail LLC (Continental) have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2), for West Branch to acquire control of, and for Continental to manage, the following Class III rail carriers: Cimarron Valley Railroad, L.C. (Cimarron), Clarkdale Arizona Central Railroad, L.C. (Clarkdale), and Wyoming and Colorado Railroad Company, Inc. (WYCO).[1] David L. Durbano (Durbano) commonly controls these railroads now as well as a fourth Class III carrier, Southwestern Railroad, Inc. (Southwestern).[2] The applicants have submitted to the Board a letter of intent concerning the transaction in this docket and will submit a final Purchase and Sale Agreement once negotiations are complete and the agreement is executed.[3]

The applicants certify that: (1) The carriers that are the subject of this notice do not connect with each other, Delta, or NMCR; (2) this transaction is not part of a series of anticipated transactions that would connect these rail carriers with each other; and (3) the transaction does not involve a Class I carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

The earliest the transaction could be consummated is February 16, 2017, the effective date of the exemption (30 days after the verified notice was filed). The parties expect to consummate the transaction on or about February 17, 2017.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by February 9, 2017 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36084, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV.*''

Decided: January 30, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2017–02285 Filed 2–1–17; 8:45 am]

BILLING CODE 4915–01–P

[1] West Branch currently controls another Class III carrier, Delta Southern Railroad, Inc. (Delta), and it will continue to do so after it consummates its acquisition of Cimarron, Clarkdale, and WYCO.

[2] The applicants do not intend to acquire control of Southwestern. Instead, West Branch will acquire certain assets of Southwestern through a newly formed subsidiary, New Mexico Central Railroad, LLC (NMCR). On the same day the applicants filed their verified notice in this docket, NMCR filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate those Southwestern assets. *See N.M. Cent. R.R.—Acquis. & Operation Exemption—Sw. R.R., Whitewater Division,* Docket No. FD 36085. Concurrently, West Branch and Continental filed a verified notice of exemption under 49 CFR 1180.2(d)(2) for West Branch to acquire and for Continental to manage NMCR upon NMCR's becoming a Class III carrier. *See W. Branch Intermediate Holdings & Cont'l Rail—Continuance in Control Exemption—N. M. Cent. R.R.,* Docket No. FD 36087.

[3] The applicants filed their letter of intent under seal and have moved that the Board issue a protective order governing access to the confidential materials. That motion is being addressed separately.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Update and Revision of the FinCEN Suspicious Activity Reports Electronic Data Fields

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), U.S. Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN, a bureau of the U.S. Department of the Treasury (''Treasury''), invites all interested parties to comment on its proposed update and revisions to the collection of information filings by financial institutions required to file such reports under the Bank Secrecy Act (''BSA''). This notice does not propose any new regulatory requirements or changes to the requirements related to suspicious activity reporting. The data fields reflect the filing requirement for all filers of SARs under the BSA. This request for comments is being made pursuant to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before April 3, 2017.

ADDRESSES: Written comments should be submitted to: Policy Division, Financial Crimes Enforcement Network,

Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, ''Attention: PRA Comments—2016 SAR Database.'' Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov,* with the caption, ''Attention: 2016 SAR Database'' in the body of the text. Please submit by one method only.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 800–767–2825 or electronically at *frc@fincen.gov*.

SUPPLEMENTARY INFORMATION:

Title: FinCEN Suspicious Activity Report by Financial Institutions (see 31 CFR 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, 1029.320, and 1030.320).

OMB Number: 1506–0065.[1]

Form Number: FinCEN 111.

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.[2] Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The Secretary has delegated to the Director of FinCEN the authority to administer the BSA.[3]

The information collected on the ''report'' is required to be provided pursuant to 31 U.S.C. 5318(g), as implemented by FinCEN regulations 31 CFR 1020.320, § 1021.320, § 1022.320, § 1023.320, § 1024.320, § 1025.320, § 1026.320, § 1029.320, and § 1030.320. The information collected under this requirement is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice relating to BSA Reports.[4]

Current Action: FinCEN is updating and revising several items in the electronic data elements currently supporting the reporting of suspicious financial activities. Attached at the end on this notice is a revised ''Summery of Data Fields'' that reflects the revised electronic items. Items identified for removal remain usable for entry into the text field associated with the various ''z'' other boxes. The following updates are proposed;

(1) Type of filing, 1e remove the reference to ''document control number''

(2) Add new item 2 ''Filing Institution Note to FinCEN'' followed by a text field with 100 character limit. This item allows the filer to identify reports filed in response to geographical targeting orders and BSA advisories etc.

(3) Part I, item 24j, remove ''no relationship to institution'' option. No other changes.

(4) Part II, Items 32a and b, add ''or cancels'' to the current item, item 32c, remove the current item.

(5) Item 34b add ''Advanced Fee'' and remove ''Business loan'', item 34i, remove mass marketing and replace with ''Ponzi Scheme,'' item 34l, add ''Securities Fraud.''

(6) Item 35, change the section title to ''Gaming Activities'' item 35a, replace the current item with ''Chip walking'', item 35b, replace the current item with ''Minimal gaming with large transactions'' item 35d, add ''Unknown source of chips.

(7) Item 36b, remove the current item and replace with ''Funnel account.''

(8) Item 37d, add ''Provided questionable or false identification''.

(9) Item 38g, insert ''Human Trafficking/Smuggling,'' 38i, remove the current item. Item 38p, add ''Transaction(s) involving foreign high risk jurisdiction'', item 38q, remove the current entry.

(10) Item 40b, remove ''wash trading'' from current item and add as a new item e.

(11) Item 41a add new ''Application Fraud,'' item 41c, add Foreclosure/Short sale fraud, item 41e, add origination fraud, and remove ''reverse mortgage fraud.''

(12) Item 42, Add as new category ''Cyber-event,'' add new 42a ''Against the Financial Institution(s),'' 42b ''Against the Financial Institutions customer(s),'' add 42z, ''Other'' with the associated text field.

(13) Item 43n, remove the term ''Penny Stocks''

(14) Item 48 IP Address, add item 48a, Date field (yyyy/mm/dd), and 48b Time field (hh:mm:ss in UTC).

(15) Add new item 49 Cyber-event Indicator (Multiple entries up to 99), add 49a, Command & Control IP Address, 49a1, value Text field,[5] 49a2, Date associated with the event, 49a3, UTC time hh:mm:ss, add 49b, Command & Control URL/Domain, 49b1, Value text field, add 49c, Malware MD5, Malware SHA–1, or Malware SHA–256, 49c1, Value text field, add 49d Media Access Control (MAC) Address, 49d1, Value text field, add 49e, Port, 49e1, Value text field, add 49f Suspicious E-Mail Address, 49f1, Value text field, add 49g, Suspicious Filename, 49g1, Value text field, add 49h, Suspicious IP Address, 49h1, Value text field, 49h2, Date associated with the event, 49h3, UTC time hh:mm:ss, add 49i Suspicious URL/Domain, 49i1, Value text field, add 49j, Targeted System, 49j1, Value text field, add 49z Other, Text field, 49z1, Value text field.

(16) Part III, no change to the data items.

(17) Part IV, increase the field length for Part IV, Item 93, ''Designated contact office,'' to 50 characters.

(18) A comprehensive summary of the proposed SAR data fields appears as an appendix to this notice.

Request comments on the above-proposed updates/revisions and new cyber-event items to the report.

Type of Review: Update and revisions of a currently approved collection.

Affected public: Business or other for-profit and not-for-profit financial institutions.

Frequency: As required.

Estimated Reporting Burden: Average of 60 minutes per report and 60 minutes recordkeeping per filing. (The reporting burden of the regulations 31 CFR 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, 1029.320, and 1030.320, is reflected in the burden for the form.)

Estimated Recordkeeping and Reporting Burden: 120 minutes (60 minutes reporting and 60 minutes recordkeeping, for a total of 2 hours).

Estimated number of respondents: 84,655 (Broker-Dealers, Casinos and Card Clubs, Depository Institutions, Future Commission Merchants, Insurance Companies, Money Services Businesses, Mutual Funds, Non-Bank Residential Mortgage Lenders and

[1] The SAR regulatory reporting requirements are currently covered under the following OMB Control numbers: 1506–0001 (Depository Institutions), 1506–0006 (Casinos and Card Clubs), 1506–0015 (Money Services Business), 1506–0019 (Securities and Futures Industries), 1506–0029 (Insurance Companies), and 1506–0061 (Residential Mortgage Lenders and Originators). Housing GSE's are not subject to the PRA. OMB Control number 1506–0065 applies to the SAR report, not the regulations.

[2] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107–56.

[3] Treasury Order 180–01 (Sept. 26, 2002).

[4] Department of the Treasury bureaus such as FinCEN renew their System of Records Notices every three years unless there is cause to amend them more frequently. FinCEN's System of Records Notice for BSA Reports System was most recently published at 79 FR 20969 (April 14, 2014).

[5] Each cyber-event indicator value text field is limited to 100 characters.

Originators). Housing Government Sponsored Enterprises are required to report suspicious activities but are not subject to the PAR.

Estimated Total Annual Responses: 2,348,395.[6]

Estimated Total Annual Reporting and Recordkeeping Burden: 4,696,790 hours.

Note: A joint filing will increase the burden to 90 minutes reporting and 60 minutes recordkeeping for a total of 2 and ½ hours per report.[7]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information, and (f) the new cyber-event items.

Jamal El Hindi,

Deputy Director, Financial Crimes Enforcement Network.

Appendix—SAR Comprehensive Summary of Data Fields

Note: Critical fields are identified with the * symbol in front of the data element number.

Type of Filing

* 1. Check all that apply:
  a. Initial report
  b. Correct/Amend prior report
  c. Continuing activity report
  d. Joint report
  e. Prior report BSA Identification Number if items 1b or 1c are checked
  f. BSA Identification Number
2. Filing Institution Note to FinCEN

Part I Subject Information

3. Check:
  a. If entity
  b. If all critical * subject information is unavailable (does not include item 27)
* 4. Individual's last name or entity's legal name
  a. (*check if*) unknown
* 5. First name
  a. (*check if*) unknown
6. Middle name
7. Suffix
8. Gender
  a. (*Check if*) Male
  b. (*Check if*) Female
  c. (*Check if*) Unknown
9. Alternate name, *e.g.* AKA—Individual or DBA—Entity *(multiple entries allowed)*
10. Occupation or type of business
  a. NAICS Code
* 11. Address
  a. (*check if*) unknown
* 12. City
  a. (*check if*) unknown
* 13. State
  a. (*check if*) unknown

Note: FinCEN will derive the State through third party data as enhanced data if not provided and Country is US, Mexico or Canada and ZIP/Postal Code is provided.

* 14. ZIP/Postal Code
  a. (*check if*) unknown

Note: FinCEN will derive ZIP + 4 through third party data as enhanced data if not provided or verified through third party data if provided.

New Data Element of County—FinCEN will derive through third party data as enhanced data.

New Data Elements for GEO Coding—FinCEN will derive through third party data as enhanced data.

New Data Element of HIFCA code—FinCEN will derive through third party data as enhanced data.

New Data Element of HIDTA code—FinCEN will derive through third party data as enhanced data.

* 15. Country Code (*2 letter code—list provided*)
  a. (*check if*) unknown (*multiple entries allowed for items 11–15*)
* 16. TIN (*enter number in space provided and check appropriate type below*)
  a. (*check if*) unknown
17. TIN type (* if 16 is known)
  a. EIN
  b. SSN–ITIN
  c. Foreign
* 18. Form of identification for subject: (*multiple entries allowed*)
  a. (*check if*) unknown
  b. (*check if*) Driver's license/state ID
  c. (*check if*) Passport
  d. (*check if*) Alien registration
  e. Number
  f. Issuing State
  g. Issuing Country
  z. (*check if*) Other (*and specify type in space provided*)
* 19. Date of birth mm/dd/yyyy
  a. (*check if*) unknown
20. Phone number—type
  a. (*check if*) Home
  b. (*check if*) Work
  c. (*check if*) Mobile
  d. (*check if*) Fax
21. Phone number
  a. Extension (if any) (*multiple entries allowed for items 20 and 21*)
22. Email address (if available) (*multiple entries allowed*)
22a. Web site (URL) address (if available) (*multiple entries allowed*)
23. Corroborative statement to filer?
  a. (*check if*) Yes
  b. (*check if*) No
24. Relationship of the subject to an institution listed in Part III or IV (check all that apply)
  a. Institution TIN
  b. Accountant
  c. Agent
  d. Appraiser
  e. Attorney
  f. Borrower
  g. Customer
  h. Director
  i. Employee
  j. Officer
  k. Owner or Controlling Shareholder
  z. Other (*and specify type in space provided*)
25. If item 24h, i, j, or k is checked, indicate status of relationship
  a. (*check if*) Relationship continues
  b. (*check if*) Terminated
  c. (*check if*) Suspended/barred
  d. (*check if*) Resigned
26. Action date if 25b, c, or d is checked (*multiple entries allowed for items 24, 25, and 26*)
* 27. Financial Institution TIN and account number(s) affected that are related to subject, if any.
  a. (*check if*) No known account involved
  b. (*check if*) Non-US Financial Institution
  c. TIN
  d. account number
  e. (*check if*) closed
  f. account number
  g. (*check if*) closed
  h. TIN
  i. account number
  j. (*check if*) closed
  k. account number
  l. (*check if*) closed

(*multiple financial institution TIN and account number entries allowed*)

28. Subject's role in suspicious activity (if applicable)
  a. (*check if*) Purchaser/Sender
  b. (*check if*) Payee/Receiver
  c. (*check if*) Both a & b

Part I Subject Information can be repeated up to a total of 999 subjects.

Part II Suspicious Activity Information

* 29. Amount involved in this report
  a. (*check if*) Amount unknown
  b. (*check if*) No amount involved
* 30. Date or date range of suspicious activity for this report
  a. From: mm/dd/yyyy
  b. To: mm/dd/yyyy
31. Cumulative amount only if box 1c

[6] Numbers are based on actual 2016 filings as reported to the BSA E-Filing System, as of 01/01/2017.

[7] Two or more separate financial institutions filing a single SAR. This type of filing constitutes less than 1% of total filings.

(continuing activity report) is checked

* (*32–42: specific type of suspicious activity*) When completing items 32 through 42, check all that apply.

32. Structuring
- a. Alters or cancels transaction to avoid BSA recordkeeping requirement
- b. Alters or cancels transaction to avoid CTR requirement
- c. Transaction(s) below BSA recordkeeping threshold
- d. Transaction(s) below CTR threshold
- e. Suspicious inquiry by customer regarding BSA reporting or recordkeeping requirements
- z. Other (*specify type of suspicious activity in space provided*)

33. Terrorist Financing
- a. Known or suspected terrorist/terrorist organization
- z. Other (*specify type of suspicious activity in space provided*)

34. Fraud
- a. ACH
- b. Advance Fee
- c. Check
- d. Consumer loan (see instructions)
- e. Credit/Debit card
- g. Healthcare
- h. Mail
- i. Ponzi Scheme
- j. Pyramid scheme
- k. Securities Fraud
- l. Wire
- z. Other (*specify type of suspicious activity in space provided*)

35. Gaming Activities
- a. Chip walking
- b. Minimal gaming with large transactions
- c. Suspicious use of counter checks or markers
- d. Unknown source of chips
- z. Other (*specify type of suspicious activity in space provided*)

36. Money laundering
- a. Exchanges small bills for large bills or vice versa
- b. Funnel account
- c. Suspicion concerning the physical condition of funds
- d. Suspicion concerning the source of funds
- e. Suspicious designation of beneficiaries, assignees or joint owners
- f. Suspicious EFT/Wire transfers
- g. Suspicious exchange of currencies
- h. Suspicious receipt of government payments/benefits
- i. Suspicious use of multiple accounts
- j. Suspicious use of noncash monetary instruments
- k. Suspicious use of third-party transactors (straw-man)
- l. Trade Based Money Laundering/Black Market Peso Exchange
- m. Transaction out of pattern for customer(s)
- z. Other (*specify type of suspicious activity in space provided*)

37. Identification/Documentation
- a. Changes spelling or arrangement of name
- b. Multiple individuals with same or similar identities
- c. Provided questionable or false documentation
- d. Provided questionable or false identification
- e. Refused or avoided request for documentation
- f. Single individual with multiple identities
- z. Other (*specify type of suspicious activity in space provided*)

38. Other suspicious activities
- a. Account takeover
- b. Bribery or gratuity
- c. Counterfeit instruments
- d. Elder financial exploitation
- e. Embezzlement/theft/disappearance of funds
- f. Forgeries
- g. Human Trafficking/Smuggling
- h. Identity theft
- i. Little or no concern for product performance penalties, fees, or tax consequences
- j. Misuse of position or self-dealing
- k. Suspected public/private corruption (domestic)
- l. Suspected public/private corruption (foreign)
- m. Suspicious use of informal value transfer system
- n. Suspicious use of multiple transaction locations
- o. Transaction with no apparent economic, business, or lawful purpose
- p. Transaction(s) involving Foreign high risk jurisdiction
- q. Two or more individuals working together
- r. Unlicensed or unregistered MSB
- z. Other (*specify type of suspicious activity in space provided*)

39. Insurance
- a. Excessive insurance
- b. Excessive or unusual cash borrowing against policy/annuity
- c. Proceeds sent to or received from unrelated third party
- d. Suspicious life settlement sales insurance (*e.g.* STOLI's, Viaticals)
- e. Suspicious termination of policy or contract
- f. Unclear or no insurable interest
- z. Other (*specify type of suspicious activity in space provided*)

40. Securities/Futures/Options
- a. Insider trading
- b. Market manipulation
- c. Misappropriation
- d. Unauthorized pooling
- e. Wash Trading
- z. Other (*specify type of suspicious activity in space provided*)

41. Mortgage fraud
- a. Application fraud
- b. Appraisal fraud
- c. Foreclosure/Shortsale fraud
- d. Loan modification fraud
- e. Origination fraud
- z. Other (*specify type of suspicious activity in space provided*)

42. Cyber Event
- a. Against Financial Institution(s)
- b. Against Financial Institution Customer(s)
- z. Other (*specify type of suspicious activity in space provided*)

43. Were any of the following product type(s) involved in the suspicious activity? Check all that apply:
- a. Bonds/Notes
- b. Commercial mortgage
- c. Commercial paper
- d. Credit card
- e. Debit card
- f. Forex transactions
- g. Futures/Options on futures
- h. Hedge fund
- i. Home equity loan
- j. Home equity line of credit
- k. Insurance/Annuity products
- l. Mutual fund
- m. Options on securities
- n. Microcap securities
- o. Prepaid access
- p. Residential mortgage
- q. Security futures products
- r. Stocks
- s. Swap, hybrid or other derivative
- z. Other (*specify type in space provided*)

44. Were any of the following instrument type(s)/payment mechanism(s) involved in the suspicious activity? Check all that apply:
- a. Bank/cashier's check
- b. Foreign currency
- c. Funds transfer
- d. Gaming instruments
- e. Government payment
- f. Money orders
- g. Personal/Business check
- h. Travelers checks
- i. U.S. Currency
- z. Other (*specify type in space provided*)

45. Commodity type (if applicable) (*multiple entries allowed*)

46. Product/Instrument description (if needed) (*multiple entries allowed*)

47. Market where traded (*list of codes will be provided—dropdown menu for electronic filers) (multiple entries allowed*)

48. IP Address (if available) (*multiple entries allowed*)
- 48a. Date (YYYYMMDD)
- 48b. Time Stamp(UTC) HH:MM:SS

49. Cyber-Event Indicators (multiple entries up to 99)
- 49a. Command and Control IP address
- 49a1 Event value text field (each entry of 49a must have a corresponding event value text field).
- 49a2 Event value text field (Date associated with the value in 49a1).
- 49a3 Event value text field (Timestamp associated with the value in 49a1).
- 49b. Command & Control URL/Domain
- 49b1 Event value text field (each entry of 49b must have a corresponding event value text field).
- 49c. Malware MD5, Malware SHA–1, or Malware SHA–256.
- 49c1 Event value text field (each entry of 49c must have a corresponding event value text field).
- 49d. Media Access control (MAC) Address
- 49d1 Event value text field (each entry of 49d must have a corresponding event value text field).
- 49e. Port
- 49e1 Event value text field (each entry of 49e must have a corresponding event value text field).
- 49f. Suspicious Email Address
- 49f1 Event value text field (each entry of 49f must have a corresponding event value text field).

49g. Suspicious Filename
49g1 Event value text field (each entry of 49g must have a corresponding event value text field).
49h. Suspicious IP Address
49h1 Event value text field (each entry of 49h must have a corresponding event value text field).
49h2 Event value Date associated with the value in 49h1.
49h3 Event value Timestamp associated with the value in 49h1.
49i. Suspicious URL/Domain
49i1 Event value text field (each entry of 49i must have a corresponding event value text field).
49j. Targeted System
49j1 Event value text field (each entry of 49j must have a corresponding event value text field).
49z. Other
49z Text description of Other value
49z1 Event value text field (each entry of 49z must have a corresponding event value text field).
50. CUSIP number (*multiple entries allowed*)

Part III Information About Financial Institution Where Activity Occurred

* 51. Type of financial institution (check only one)
a. Casino/Card club
b. Depository institution
c. Insurance company
d. MSB
e. Securities/Futures
z. Other (*specify type of institution in space provided*)
* 52. Primary Federal Regulator (*instructions specify banking agencies, SEC, CFTC, IRS*)
CFTC
Federal Reserve
FDIC
IRS
NCUA
OCC
SEC
Not Applicable
53. If item 51a is checked, indicate type of gaming institution (check only one)
a. State licensed casino
b. Tribal authorized casino
c. Card club
z. Other (*specify type of gaming institution in space provided*)
54. If item 51e is checked, indicate type of Securities and Futures institution or individual where activity occurred—check box(es) for functions that apply to this report
a. Clearing broker—securities
b. Futures commission merchant
c. Holding company
d. Introducing broker—commodities
e. Introducing broker—securities
f. Investment adviser
g. Investment company
h. Retail foreign exchange dealer
i. Subsidiary of financial/bank holding company
z. Other (*specify type of institution or individual in space provided*)
55. Filing institution identification number (Check one box to indicate type)
a. Central Registration Depository (CRD) number
b. Investment Adviser Registration Depository (IARD) number
c. National Futures Association (NFA) number
d. Research, Statistics, Supervision, and Discount (RSSD) number
e. Securities and Exchange Commission (SEC) number
f. Identification number
56. Financial institution's role in transaction (if applicable)
a. (*check if*) Selling location
b. (*check if*) Paying location
c. (*check if*) Both a & b
* 57. Legal name of financial institution
a. (*check if*) unknown
58. Alternate name, *e.g.,* AKA—individual or trade name, DBA—entity
* 59. TIN (*enter number in space provided and check appropriate type below*)
a. (*check if*) unknown
60. TIN type (* if 59 is known)
a. EIN
b. SSN–ITIN
c. Foreign
* 61. Address
a. (*check if*) unknown
* 62. City
a. (*check if*) unknown
63. State

Note: FinCEN will derive State through third party data as enhanced data if not provided and Country is US, Mexico or Canada and ZIP/Postal Code is provided.

* 64. ZIP/Postal Code
a. (*check if*) unknown

Note: FinCEN will derive ZIP + 4 through third party data as enhanced data if not provided or verified through third party data if provided.

New Data Element of County—FinCEN will derive through third party data as enhanced data.

* 65. Country (*2 letter code—list provided*)
a. (*check if*) unknown
66. Internal control/file number
67. Loss to financial institution (*if applicable*)
68. Branch's role in transaction (if applicable)
a. (*check if*) Selling location
b. (*check if*) Paying location
c. (*check if*) Both a & b
* 69. Address of branch or office where activity occurred
a. (if no branch activity involved, check box a)
70. Research, Statistics, Supervision, and Discount (RSSD) number (*of the Branch*)
71. City
72. State

Note: FinCEN will derive State through third party data as enhanced data if not provided and Country is US, Mexico or Canada and ZIP/Postal Code is provided.

73. ZIP/Postal Code

Note: FinCEN will derive ZIP + 4 through third party data as enhanced data if not provided or verified through third party data if provided.

New Data Element of County—FinCEN will derive through third party data as enhanced data.

New Data Elements for GEO Coding—FinCEN will derive through third party data as enhanced data will be identified for the financial institution and any branches provided.

New Data Element of HIFCA code—FinCEN will derive through third party data as enhanced data will be identified for the financial institution and any branches provided.

New Data Element of HIDTA code—FinCEN will derive through third party data as enhanced data will be identified for the financial institution and any branches provided.

74. Country (*2 letter code—list provided*) (*multiple entries allowed for items 68–74;*)

Part III Information about Financial Institution Where Activity Occurred can be repeated up to a total of 99 financial institutions.

Part IV Filing Institution Contact Information

* 75. Primary Federal Regulator (*instructions specify banking agencies, SEC, CFTC, IRS*)
CFTC
Federal Reserve
FDIC
IRS
NCUA
OCC
SEC
Not Applicable
* 76. Filer name (Holding company, lead financial institution, or agency, if applicable).
* 77. TIN (*enter number in space provided and check appropriate type below*)
* 78. TIN type
a. EIN
b. SSN/ITIN
c. Foreign
* 79. Type of financial institution (check only one)
a. Casino/Card club
b. Depository institution
c. Insurance company
d. MSB
e. Securities/Futures
z. Other (*specify type of institution in space provided*)
80. Type of Securities and Futures institution or individual filing this report—check box(es) for functions that apply to this report
a. Clearing broker—securities
b. CPO/CTA
c. Futures commission merchant
d. Holding company
e. Introducing broker—commodities
f. Introducing broker—securities
g. Investment adviser
h. Investment company
i. Retail foreign exchange dealer
j. SRO Futures
k. SRO Securities
l. Subsidiary of financial/bank holding company
z. Other (*specify type of institution or individual in space provided*)
81. Filing institution identification number (Check one box to indicate type)
a. Central Registration Depository (CRD) number
b. Investment Adviser Registration Depository (IARD) number

c. National Futures Association (NFA) number
d. Research, Statistics, Supervision, and Discount (RSSD) number
e. Securities and Exchange Commission (SEC) number
f. Identification number
* 82. Address
* 83. City
84. State

Note: FinCEN will derive State through third party data as enhanced data if not provided and Country is US, Mexico or Canada and ZIP/Postal Code is provided.

* 85. ZIP/Postal Code

Note: FinCEN will derive ZIP + 4 through third party data as enhanced data if not provided or verified through third party data if provided.

New Data Element of County—FinCEN will derive Derived through third party data as enhanced data.

New Data Elements for GEO Coding—FinCEN will derive through third party data as enhanced data.

* 86. Country (*2 letter code—list provided*)
87. Alternate name, *e.g.,* AKA—individual or trade name, DBA—entity
88. Internal control/file number
89. LE contact agency
90. LE contact name
91. LE contact phone number
a. Extension (*if any*)
92. LE contact date
* 93. Designated contact office
* 94. Designated contact office phone number including area code
a. Extension, if any
* 95. Date filed

*** Part V Suspicious Activity Information—Narrative**

(*text field 17,000 characters*)
(*one attachment permitted*—comma separated value (.csv) file, *1 MB maximum size*)

[FR Doc. 2017–02235 Filed 2–1–17; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before March 6, 2017 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–0934, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Fiscal Service (FS)

OMB Control Number: 1530–0001.

Type of Review: Extension without change of a currently approved collection.

Title: Minority Bank Deposit Program (MBDP) Certification Form for Admission.

Form: FS Form 3144.

Abstract: A financial institution who wants to participate in the MBDP must complete this form. The approved application certifies the institution as minority and is admitted into the program.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 64.

OMB Control Number: 1530–0036.

Type of Review: Extension without change of a currently approved collection.

Title: Request to Reissue U.S. Savings Bonds to a Personal Trust.

Form: FS Form 1851.

Abstract: The information is necessary to support a request for reissue of savings bonds in the name of the trustee of a personal trust estate.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 2,650.

OMB Control Number: 1530–0038.

Type of Review: Extension without change of a currently approved collection.

Title: Application by Survivors for Payment of Bond or Check Issued Under Armed Forces Leave Act of 1946.

Form: FS Form 2066.

Abstract: Used by survivors for payment of bonds issued under Armed Forces Leave Act of 1946. The information is to identify the bonds and/or checks involved and to establish a survivor's claim in order to issue payment.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 1,250.

OMB Control Number: 1530–0041.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Recognition as Natural Guardian of Minor Not Under Legal Guardianship and for Disposition of Minor's Interest In Registered Securities.

Form: FS Form 2481.

Abstract: The information is collected to apply for recognition as a natural guardian and request disposition of securities belonging to a minor in situations where a natural guardian is no longer acting or a legal representative is not appointed. Regulations governing U.S. Securities prohibit the registration of securities in the name of a minor in their own right. The natural guardian may be given responsibility for the securities. The information is used to identify the securities involved and to establish the authority to reissue the securities or payment in lieu thereof.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 208.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 30, 2017.

Spencer Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2017–02203 Filed 2–1–17; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF VETERANS AFFAIRS

Request for Information: To Provide Comprehensive Advice To Assist the Department of Veterans Affairs (VA) With Developing Policy Regarding Safety and Quality Standards for Providers of Modification Services Under the Automobile Adaptive Equipment (AAE) Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of request for information.

SUMMARY: The VA is requesting information to assist in implementing section 3 of the Veterans Mobility Safety Act of 2016 (H.R. 3471, hereafter referred to as ''the Act''), which requires VA to develop a comprehensive policy regarding quality standards for

automobile adaptive modification services provided to eligible Veterans and Servicemembers under VA's AAE program. This notice requests information and comments from interested parties to help inform VA's development of this policy, to include specific questions for comment with regard to safety and quality standards for AAE and installation, installer or provider certification by a third party organization or manufacturer, education and training of VA personnel, installer or provider compliance with the Americans with Disabilities Act of 1990, and permitting eligible Veterans and Servicemembers to receive automobile adaptive modifications at their residence or location of choice.

DATES: Comments in response to this request for information must be received by VA on or before February 17, 2017.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to 202–273–9026. Comments should indicate that they are submitted in response to ''Request for Information: To provide comprehensive advice to assist the Department of Veterans Affairs with developing policy regarding safety and quality standards for providers of modification services under the automobile adaptive equipment program.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. During the comment period, comments may also be viewed online through the Federal Docket Management System at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Shayla Mitchell, Ph.D., MS, CRC, Rehabilitation and Prosthetic Services (10P4R), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–0366 or (202) 461–0389 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 3 of the Act requires VA to develop a comprehensive policy regarding quality standards for automobile adaptive modification services provided to eligible Veterans and Servicemembers under VA's AAE program. In accordance with section 3(b) of the Act, the scope of this policy shall cover VA's management of its AAE program, the development of safety and quality standards for AAE and installation, provider certification by a third party organization or manufacturer, education and training of VA personnel, provider compliance with the Americans with Disabilities Act of 1990, and permitting eligible Veterans and Servicemembers to receive automobile adaptive modifications at their residence or location of choice. To comply with section 3(e) of the Act, VA must develop this policy in consultation with Veterans Service Organizations; the National Highway Transportation Administration, industry representatives; manufacturers of AAE; and other entities with expertise in installing, repairing, replacing, or manufacturing mobility equipment, or developing mobility accreditation standards for AAE. This notice and request for information serves as the means for VA to consult with these groups and entities. VA will use comments it receives to determine the best approach to developing a program that will meet the requirements in section 3(b) of the Act. VA will then draft and submit a proposed rule for public comment, and the resulting final rule and promulgated regulation will establish the policy required under section (3)(a) of the Act. Although section (3)(a) of the Act uses the term ''policy,'' VA contends that a regulation is required to establish the program required by section (3)(a) of the Act because of the effect this will have on VA's administration of AAE benefits. In order to publish a final rule that is effective prior to the 1-year deadline established in section 3(d)(1) of the Act, VA must expedite this consultation which will be foundational to the regulatory development process. Hence, this notice and request for information has a comment period of only 15 days in which groups and entities may reply to the questions presented in the next section below. VA believes that 15 days is sufficient to provide comments, as the groups and entities with expertise in installing, repairing, replacing, or manufacturing mobility equipment or developing mobility accreditation standards for AAE will likely have the information readily available, or can quickly compile and submit such information.

This notice is a request for information only. This does not constitute a Request for Proposal, applications, proposal abstracts, or quotations, and VA will not accept unsolicited proposals. Commenters are encouraged to provide complete but concise responses to the questions outlined below. Please note that VA will not respond to comments or other questions regarding policy plans, decisions, or issues with regard to this notice. VA may choose to contact individual commenters, and such communications would only serve to further clarify their written comments.

Request for Information

VA requests information that will assist in developing the program required by section (3)(a) of the Act. This includes information about VA's management of its AAE program, the development of safety and quality standards for AAE and installation, education and training of VA personnel, provider certification by a third party organization or manufacturer, provider compliance with the Americans with Disabilities Act of 1990, and permitting eligible Veterans and Servicemembers to receive automobile adaptive modifications at their residence or location of choice. Specifically, VA requests information related to the questions below:

1. How should VA define safety and quality standards for its AAE program?

a. Do such Federal government standards related to AAE safety and quality exist that VA can use or adopt? If so, what are those standards?

b. Do other government standards (*e.g.,* state, local) related to AAE safety and quality exist that VA can use or adopt? If so, what are those standards?

c. Do industry standards related to AAE safety and quality (as referenced above) exist that VA can use or adopt?

i. If so, what are those standards?

ii. Have such standards been tested for validity and reliability?

iii. What test(s) of validity and reliability were used to establish those standards?

2. What criteria should VA use to monitor and assess AAE safety and quality, and how should VA enforce compliance or address non-compliance with these criteria? For example:

a. Are there industry standards or checklists that are available for quality and safety inspections? If so, please provide.

b. How do other entities (*e.g.,* other Federal government agencies, for-profit, non-profit/not-for-profit entities, third party certifiers, other countries) monitor and enforce compliance with AAE safety and quality measures?

c. Should VA require all modifiers to comply with Federal Motor Vehicle Safety Standards, provide proof of insurance, provide 24-hour towing/emergency services, and provide

warranties on all AAE items and installation?

3. How often should VA assess the safety and quality standards referenced above?

4. How should VA define and differentiate levels of modification complexity for AAE installations?

a. How does complexity level impact adherence to the safety and quality standards referenced above?

5. What type(s) of certifications, licensure (to include state licensure), etc., should VA require from AAE modifiers?

6. What role or responsibility should beneficiaries of VA's AAE program have when there is a safety or quality concern with equipment or modifications provided under VA's AAE program?

7. What type of education or training should be required for VA personnel to be able to determine compliance and consistent application of standard for safety and quality for both AAE equipment and installation?

8. Are there suggestions of safety organizations (*e.g.,* non-profit, not-for-profit, private, international) that can assist VA in developing safety and quality standards for its AAE program? Examples of such organizations VA is aware of include: Society for Automobile Engineers, Institute of Electrical and Electronic Engineers, National Sanitation Foundation International, International Organization for Standardization, Automotive Safety Council, National Safety Council, Rehabilitation Engineering and Assistive Technology Society of North America, Department of Transportation, Consumer Product Safety Commission, Department of Health and Human Services, National Highway Traffic and Safety Administration, and National Mobility and Equipment Dealers Association.

Paperwork Reduction Act

This request for information constitutes a general solicitation of public comments as stated in the implementing regulations of the Paperwork Reduction Act of 1995 at 5 CFR 1320.3(h)(4). Therefore, this request for information does not impose information collection requirements (*i.e.,* reporting, recordkeeping or third-party disclosure requirements). Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on January 27, 2017, for publication.

Dated: January 27, 2017.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2017–02173 Filed 2–1–17; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 82 Thursday,
No. 21 February 2, 2017

Part II

The President

Memorandum of January 28, 2017—Organization of the National Security Council and the Homeland Security Council
Memorandum of January 28, 2017—Plan To Defeat the Islamic State of Iraq and Syria

Federal Register
Vol. 82, No. 21
Thursday, February 2, 2017

Presidential Documents

Title 3—

The President

National Security Presidential Memorandum–2 of January 28, 2017

Organization of the National Security Council and the Homeland Security Council

Memorandum for the Vice President[,] the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[,] the Attorney General[,] the Secretary of Agriculture[,] the Secretary of Health and Human Services[,] the Secretary of Transportation[,] the Secretary of Commerce[,] the Secretary of Energy[,] the Secretary of Homeland Security[,] the Assistant to the President and Chief of Staff[,] the Assistant to the President and Chief Strategist[,] the Director of the Office of Management and Budget[,] the Representative of the United States to the United Nations[,] the United States Trade Representative[,] the Chair of the Council of Economic Advisers[,] the Chairman of the Board of Governors of the Federal Reserve System[,] the Director of National Intelligence[,] the Director of the Central Intelligence Agency[,] the Chairman of the Joint Chiefs of Staff[,] the Assistant to the President for National Security Affairs[,] the Assistant to the President for Homeland Security and Counterterrorism[,] the Assistant to the President for Economic Policy[,] the Assistant to the President for Trade and Manufacturing Policy[,] the Assistant to the President for Intragovernmental and Technology Initiatives[,] the Deputy Assistant to the President and National Security Advisor to the Vice President[,] the Counsel to the President[,] the Administrator of the United States Agency for International Development[,] the Administrator of the National Aeronautics and Space Administration[,] the Chairman of the Nuclear Regulatory Commission[,] the Director of the Federal Bureau of Investigation[,] the Director of the Office of Science and Technology Policy[,] the Director of National Drug Control Policy[,] the Chairman of the President's Intelligence Advisory Board[,] the Administrator of the Federal Emergency Management Agency[, and] the Archivist of the United States

As President, my highest priority is to ensure the safety and security of the American people. In order to advise and assist me in executing this solemn responsibility, as well as to protect and advance the national interests of the United States at home and abroad, I hereby direct that my system for national security policy development and decision-making shall be organized as follows:

A. *The National Security Council, the Homeland Security Council, and Supporting Staff*

The National Security Act of 1947, as amended, established the National Security Council (NSC) to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security. There is also a Homeland Security Council (HSC)—established through Executive Order 13228 of October 8, 2001, and subsequently codified in the Homeland Security Act of 2002—that has the purpose of advising the President on matters pertaining to homeland security. Each Council is also responsible for the effective coordination of the security-related activities and functions of the executive departments and agencies.

The security threats facing the United States in the 21st century transcend international boundaries. Accordingly, the United States Government's decision-making structures and processes to address these challenges must remain equally adaptive and transformative. Both Councils are statutory bodies that

the President will continue to chair. Invitations to participate in specific Council meetings shall be extended to those heads of executive departments and agencies, and other senior officials, who are needed to address the issue or issues under consideration. When the President is absent from a meeting of either Council, the Vice President may preside at the President's direction.

The Assistant to the President for National Security Affairs (National Security Advisor) and the Assistant to the President for Homeland Security and Counterterrorism (Homeland Security Advisor) shall be responsible, as appropriate and at the President's direction, for determining the agenda for the NSC or HSC, respectively, ensuring that the necessary papers are prepared, and recording Council actions and Presidential decisions in a timely manner. When international economic issues are on the agenda of the NSC, the National Security Advisor and the Assistant to the President for Economic Policy shall perform these tasks in concert.

The NSC and HSC shall have as their regular attendees (both statutory and non-statutory) the President, the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Energy, the Secretary of Homeland Security, the National Security Advisor, the Homeland Security Advisor, and the Representative of the United States to the United Nations. When international economic issues are on the agenda of the NSC, the NSC's regular attendees will include the Secretary of Commerce, the United States Trade Representative, and the Assistant to the President for Economic Policy. The Director of National Intelligence and the Chairman of the Joint Chiefs of Staff, as statutory advisers to the NSC, shall also attend NSC meetings. The Assistant to the President and Chief of Staff, the Assistant to the President and Chief Strategist, the Counsel to the President, the Deputy Counsel to the President for National Security Affairs, and the Director of the Office of Management and Budget are invited as attendees to any NSC meeting.

In addition to the NSC and HSC, there is also a single NSC staff within the Executive Office of the President that serves both the NSC and HSC. The staff is composed of regional, issue-focused, and functional directorates and headed by a single civilian Executive Secretary, pursuant to 50 U.S.C. 3021, who is also the Chief of Staff. All policy and staff activity decisions will be transmitted to the Executive Secretary for appropriate distribution and awareness. The purpose of the NSC staff is to advise me, the National Security Advisor, the Homeland Security Advisor, the NSC members, the HSC members, and others in the White House; to facilitate the implementation of Administration policy; and to help coordinate the national-security-related activities of the executive departments and agencies.

B. *The Principals Committee*

The Principals Committee (PC) shall continue to serve as the Cabinet-level senior interagency forum for considering policy issues that affect the national security interests of the United States. The PC shall be convened and chaired by the National Security Advisor or the Homeland Security Advisor, as appropriate, in consultation with the appropriate attendees of the PC. The Chair shall determine the agenda in consultation with the appropriate committee members, and the Executive Secretary shall ensure that necessary papers are prepared and that conclusions and decisions are communicated in a timely manner. Invitations to participate in or attend a specific PC shall be extended at the discretion of the National Security Advisor and the Homeland Security Advisor, and may include those Cabinet-level heads of executive departments and agencies, and other senior officials, who are needed to address the issue under consideration.

The PC shall have as its regular attendees the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Assistant to the President and Chief of Staff, the Assistant to the President and Chief Strategist, the National Security

Advisor, and the Homeland Security Advisor. The Director of National Intelligence and the Chairman of the Joint Chiefs of Staff shall attend where issues pertaining to their responsibilities and expertise are to be discussed. The Counsel to the President, the Deputy Counsel to the President for National Security Affairs, and the Director of the Office of Management and Budget may attend all PC meetings.

The Assistant to the President and Deputy National Security Advisor (Deputy National Security Advisor), the Deputy Assistant to the President and National Security Advisor to the Vice President, and the Executive Secretary (who shall serve as the Executive Secretary of the PC) shall attend all of the meetings of the PC, and the Representative of the United States to the United Nations and the Assistant to the President for Intragovernmental and Technology Initiatives may attend as appropriate.

When international economic issues are on the agenda of the PC, the Committee's regular attendees will include the Secretary of Commerce, the United States Trade Representative, and the Assistant to the President for Economic Policy (who shall serve as Chair for agenda items that principally pertain to international economics).

C. *The Deputies Committee*

The Deputies Committee (DC) shall continue to serve as the senior sub-Cabinet interagency forum for consideration of, and where appropriate, decision-making on, policy issues that affect the national security interests of the United States. The DC shall be convened and chaired by the Deputy National Security Advisor or the Deputy Assistant to the President and Deputy Homeland Security Advisor (Deputy Homeland Security Advisor), as appropriate. The Chair shall determine the agenda in consultation with the regular DC members, and the Executive Secretary shall ensure that necessary papers are prepared and that conclusions and decisions are communicated in a timely manner. Invitations to participate in or attend a specific DC meeting shall be extended by the Chair to those at the Deputy or Under Secretary level of executive departments and agencies, and to other senior officials, who are needed to address the issue under consideration.

The DC shall have as its regular members the Deputy Secretary of State, the Deputy Secretary of the Treasury, the Deputy Secretary of Defense, the Deputy Attorney General, the Deputy Secretary of Homeland Security, the Deputy Director of the Office of Management and Budget, the Deputy Director of National Intelligence, the Vice Chairman of the Joint Chiefs of Staff, the Deputy Assistant to the President and National Security Advisor to the Vice President, the Deputy National Security Advisor, the Deputy Homeland Security Advisor, and the Administrator of the United States Agency for International Development.

The Executive Secretary shall attend the DC meetings. The Deputy Counsel to the President for National Security Affairs may attend all DC meetings. The relevant Deputy Assistant to the President for the specific regional and functional issue under consideration shall also be invited to attend. Likewise, when and where appropriate, the Deputy Assistant to the President for Strategic Planning, the Deputy Assistant to the President for Strategic Communication, the Deputy Assistant to the President for International Economic Affairs, the Deputy Assistant to the President for Transnational Issues, and the Deputy Representative of the United States to the United Nations, shall also be invited to attend. Other senior officials shall be invited where appropriate.

The DC shall review and monitor the work of the interagency national security process, including the interagency groups established pursuant to section D below. The DC shall help to ensure that issues brought before the NSC, HSC, and PC have been properly analyzed and prepared for decision. The DC shall also focus significant attention on monitoring the implementation of policies and decisions and shall conduct periodic reviews of the Administration's major national security and foreign policy initiatives.

The DC is responsible for establishing Policy Coordination Committees (PCCs) and for providing objectives and clear guidance.

D. *Policy Coordination Committees*

Management of the development and implementation of national security policies by multiple executive departments and agencies typically shall be accomplished by the PCCs, with participation primarily occurring at the Assistant Secretary level. As the main day-to-day fora for interagency coordination of national security policies, the PCCs shall provide policy analysis for consideration by the more senior committees of the national security system and ensure timely responses to the President's decisions.

Regional and issue-related PCCs shall be established at the direction of the DC. Members of the NSC staff (or National Economic Council staff, as appropriate) will chair the PCCs; the DC, at its discretion, may add co-chairs to any PCC. The PCCs shall review and coordinate the implementation of Presidential decisions in their respective policy areas. The Chair of each PCC, in consultation with the Executive Secretary, shall invite representatives of other executive departments and agencies to attend meetings of the PCC where appropriate. The Chair of each PCC, with the agreement of the Executive Secretary, may establish subordinate working groups to assist that PCC in the performance of its duties.

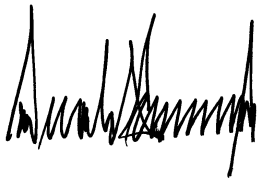
An early meeting of the DC will be devoted to establishing the PCCs, determining their memberships, and providing them with mandates and strict guidance. Until the DC has established otherwise, the existing system of Interagency Policy Committees shall continue.

E. *General*

The President and the Vice President may attend any and all meetings of any entity established by or under this memorandum.

This document is part of a series of National Security Presidential Memoranda that shall replace both Presidential Policy Directives and Presidential Study Directives as the instrument for communicating relevant Presidential decisions. This memorandum shall supersede all other existing Presidential guidance on the organization or support of the NSC and the HSC. With regard to its application to economic matters, this document shall be interpreted in concert with any Executive Order governing the National Economic Council and with Presidential Memoranda signed hereafter that implement either this memorandum or that Executive Order.

The Secretary of Defense is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 28, 2017

[FR Doc. 2017–02381
Filed 2–1–17; 11:15 am]
Billing code 3295–F7–P

Presidential Documents

National Security Presidential Memorandum–3 of January 28, 2017

Plan To Defeat the Islamic State of Iraq and Syria

Memorandum for the Vice President[,] the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[,] the Attorney General[,] the Secretary of Energy[,] the Secretary of Homeland Security[,] the Assistant to the President and Chief of Staff[,] the Director of National Intelligence[,] the Assistant to the President for National Security Affairs[,] the Counsel to the President[,] the Director of the Central Intelligence Agency[, and] the Chairman of the Joint Chiefs of Staff

The Islamic State of Iraq and Syria, or ISIS, is not the only threat from radical Islamic terrorism that the United States faces, but it is among the most vicious and aggressive. It is also attempting to create its own state, which ISIS claims as a ''caliphate.'' But there can be no accommodation or negotiation with it. For those reasons I am directing my Administration to develop a comprehensive plan to defeat ISIS.

ISIS is responsible for the violent murder of American citizens in the Middle East, including the beheadings of James Foley, Steven Sotloff, and Peter Abdul-Rahman Kassig, as well as the death of Kayla Mueller. In addition, ISIS has inspired attacks in the United States, including the December 2015 attack in San Bernardino, California, and the June 2016 attack in Orlando, Florida. ISIS is complicit in a number of terrorist attacks on our allies in which Americans have been wounded or killed, such as the November 2015 attack in Paris, France, the March 2016 attack in Brussels, Belgium, the July 2016 attack in Nice, France, and the December 2016 attack in Berlin, Germany.

ISIS has engaged in a systematic campaign of persecution and extermination in those territories it enters or controls. If ISIS is left in power, the threat that it poses will only grow. We know it has attempted to develop chemical weapons capability. It continues to radicalize our own citizens, and its attacks against our allies and partners continue to mount. The United States must take decisive action to defeat ISIS.

Sec. 1. *Policy.* It is the policy of the United States that ISIS be defeated.

Sec. 2. *Policy Coordination.* Policy coordination, guidance, dispute resolution, and periodic in-progress reviews for the functions and programs described and assigned in this memorandum shall be provided through the interagency process established in National Security Presidential Memorandum–2 of January 28, 2017 (Organization of the National Security Council and the Homeland Security Council), or any successor.

Sec. 3. *Plan to Defeat ISIS.* (a) *Scope and Timing.*

(i) Development of a new plan to defeat ISIS (the Plan) shall commence immediately.

(ii) Within 30 days, a preliminary draft of the Plan to defeat ISIS shall be submitted to the President by the Secretary of Defense.

(iii) The Plan shall include:

(A) a comprehensive strategy and plans for the defeat of ISIS;

(B) recommended changes to any United States rules of engagement and other United States policy restrictions that exceed the requirements of international law regarding the use of force against ISIS;

(C) public diplomacy, information operations, and cyber strategies to isolate and delegitimize ISIS and its radical Islamist ideology;

(D) identification of new coalition partners in the fight against ISIS and policies to empower coalition partners to fight ISIS and its affiliates;

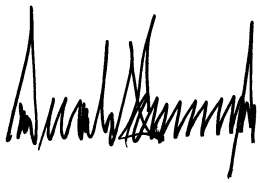
(E) mechanisms to cut off or seize ISIS's financial support, including financial transfers, money laundering, oil revenue, human trafficking, sales of looted art and historical artifacts, and other revenue sources; and

(F) a detailed strategy to robustly fund the Plan.

(b) *Participants.* The Secretary of Defense shall develop the Plan in collaboration with the Secretary of State, the Secretary of the Treasury, the Secretary of Homeland Security, the Director of National Intelligence, the Chairman of the Joint Chiefs of Staff, the Assistant to the President for National Security Affairs, and the Assistant to the President for Homeland Security and Counterterrorism.

(c) *Development of the Plan.* Consistent with applicable law, the Participants identified in subsection (b) of this section shall compile all information in the possession of the Federal Government relevant to the defeat of ISIS and its affiliates. All executive departments and agencies shall, to the extent permitted by law, promptly comply with any request of the Participants to provide information in their possession or control pertaining to ISIS. The Participants may seek further information relevant to the Plan from any appropriate source.

(d) The Secretary of Defense is hereby authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 28, 2017

[FR Doc. 2017–02386
Filed 2–1–17; 11:15 am]
Billing code 3295–F7–P

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Federal Register

Vol. 82, No. 21

Thursday, February 2, 2017

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Federal Register/Code of Federal Regulations

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Laws **741–6000**

Presidential Documents

Executive orders and proclamations **741–6000**

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Privacy Act Compilation **741–6050**

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, FEBRUARY

8893–8984 1

8985–9126 2

CFR PARTS AFFECTED DURING FEBRUARY

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

Executive Orders:

13769 8977

Administrative Orders:

Memorandums:

Memorandum of January 27, 2017 8983

National Security Presidential Memorandum–2 of January 28, 2017 9119

National Security Presidential Memorandum–3 of January 28, 2017 9125

10 CFR

429 8985

430 8985

431 8985

11 CFR

111 8986

15 CFR

774 8893

16 CFR

1112 8989

1250 8989

Proposed Rules:

1240 8907

1500 9012

1507 9012

18 CFR

39 8993

40 8994

Proposed Rules:

39 9034

21 CFR

1105 8894

28 CFR

31 8894

29 CFR

1208 8895

1910 8901

1915 8901

1926 8901

36 CFR

1250 8901

37 CFR

201 9004

204 9004

40 CFR

Proposed Rules:

52 9035

46 CFR

502 8903

47 CFR

73 9009

Proposed Rules:

1 8907

25 8907

54 8907

73 8907

74 8907

49 CFR

380 8903

383 8903

384 8903

50 CFR

679 ..... 8904, 8905, 8906

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 72/P.L. 115–3
GAO Access and Oversight Act of 2017 (Jan. 31, 2017; 131 Stat. 7)
Last List January 26, 2017

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