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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

**[Docket No. APHIS–2016–0022]**

**RIN 0579–AE29**

## Importation of Hass Avocados From Colombia

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations to allow the importation of fresh Hass avocado fruit from Colombia into the continental United States. As a condition of entry, fresh Hass avocado fruit from Colombia will have to be produced in accordance with a systems approach that includes orchard and packinghouse requirements and port of entry inspection. The fruit will also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Colombia with an additional declaration stating that the fruit has been produced in accordance with the requirements. This action will allow for the importation of fresh Hass avocado fruit from Colombia while continuing to provide protection against the introduction of plant pests into the continental United States.

**DATES:** Effective September 14, 2017.

**FOR FURTHER INFORMATION CONTACT:** Mr. David B. Lamb, Senior Regulatory Policy Specialist, IRM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2103.

**SUPPLEMENTARY INFORMATION:**

### Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–77, referred to below as the regulations or the fruits and vegetables regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

On October 27, 2016, we published in the **Federal Register** (81 FR 74722–74727, Docket No. APHIS–2016–0022) a proposal [1] to amend the regulations by allowing for the importation of commercially produced fresh Hass avocado (*Persea americana*) fruit from Colombia into the continental United States.

We solicited comments concerning our proposal for 60 days ending December 27, 2016. We reopened and extended the deadline for comments until February 16, 2017, in a document published in the **Federal Register** on January 17, 2017 (82 FR 4798, Docket No. APHIS–2016–0022). We extended the reopened comment period until March 20, 2017, in a document published in the **Federal Register** on February 10, 2017 (82 FR 10312, Docket No. APHIS–2016–0022). We received 43 comments by that date. They were from producers, exporters, industry groups, and representatives of State and foreign governments. Of these, 32 were fully supportive of the proposed action. The remaining 11 raised issues that are discussed below by topic.

### General Comments

One commenter suggested that APHIS focus on importing fresh Hass avocado fruit from Indonesia since Indonesia's production levels are much higher than Colombia's.

APHIS's phytosanitary evaluation process only begins once a country has submitted a formal request for market access for a particular commodity. APHIS does not solicit such requests, nor do we control which countries submit requests. Were Indonesia to submit a market access request for avocados we would evaluate that request in the same way we do any other.

The same commenter argued that we should direct our efforts towards keeping avocado fruit produced domestically within the United States, thus reducing the need to import fresh Hass avocado fruit. A second commenter urged APHIS to focus instead on bolstering domestic avocado growers. The commenter claimed that the number and size of U.S. avocado farms is decreasing as a result of competition from foreign growers.

It is beyond APHIS' statutory authority to prohibit importation of a commodity for any reason other than to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. Under the Plant Protection Act (PPA), APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. The second commenter's claim regarding a decrease in the number of domestic producers is incorrect. Nearly all domestic production of fresh Hass avocado fruit takes place in California and the number of avocado farms in that State increased by nearly 17 percent between 2002 and 2012. While total acreage did decrease by 20 percent during that period, largely as a result of urban growth and water shortages, higher yields have allowed producers to maintain steady overall production levels.

Another commenter was supportive of the action, but only if the fresh Hass avocado fruit from Colombia was grown organically.

While we do not stipulate that the fresh Hass avocado fruit must be grown to USDA organic standards, Colombian growers may choose to do so. The USDA Agricultural Marketing Service enforces the regulations governing domestic and imported organic agricultural commodities under the National Organic Program.

Several commenters said that the phytosanitary risk represented by the importation of fresh Hass avocado fruit from Colombia outweighs any potential monetary gains associated with such importation.

This action was predicated on the findings of several risk assessment documents that provide a scientific basis for potential importation of fresh Hass avocado fruit from Colombia. Without these risk assessment

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0022.*

documents, which have withstood several reviews and public comment periods, APHIS would not have proposed this action. Economic interests may stimulate consideration of the expansion of trade of agricultural commodities between countries, but all decisionmaking concerning phytosanitary restrictions on trade must be science-based. APHIS stands behind the risk assessment documents that support this rule, and believes they are based on sound science. The risk mitigations required by APHIS will remove any insect pests from the importation pathway.

Another commenter expressed concerns that the national plant protection organization (NPPO) of Colombia may not adequately implement the required systems approach in the interests of cost-cutting.

Our standard practice is to conduct site visits prior to the initiation of any import program. This is to ensure that all required mitigations are in place and the agreed upon operational workplan is being enforced. Subject matter experts inspect production sites and packinghouses and report their findings to APHIS. Furthermore, the operational workplan authorizes the regional APHIS International Services Director to conduct periodic audit visits of production sites. While it is true that the systems approach will be overseen thereafter by the NPPO of Colombia or its designee, APHIS will provide qualified personnel to work cooperatively with the NPPO of Colombia and all other program participants to review and evaluate operations in the field and packinghouses, quarantine pest management and control activities, and other safeguarding measures when such assistance is necessary as a result of noncompliance events or program audits conducted in accordance with APHIS' policy.

**Comments on the Pest List**

The pest risk assessment (PRA) that accompanied the proposed rule identified four quarantine pests that could be introduced into the United States in consignments of fresh Hass avocado fruit from Colombia. A quarantine pest is defined in § 319.56–2 as ''a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.'' The pests listed in the PRA are:

- The avocado seed weevil, *Heilipus lauri* Boheman;
- The avocado seed weevil, *Heilipus trifasciatus;*
- Pink hibiscus mealybug, *Maconellicoccus hirsutus* (Green); and
- Avocado seed moth, *Stenoma catenifer.*

We later amended the PRA in order to remove pink hibiscus mealybug from the pest list after further examination revealed that growing conditions and standard packinghouse practices used in Colombia would effectively prevent pink hibiscus mealybug from following the pathway of importation into the United States. We have therefore removed references to that pest in the final regulatory text and supporting documents.

One commenter argued that the larvae of the two avocado seed weevils and the avocado seed moth are internal feeders, unaffected by post-harvest processing and very likely to escape detection via visual inspection.

The avocado seed weevil *Heilipus lauri* Boheman and the avocado seed moth are among the pests analyzed in connection with the importation of fresh Hass avocado fruit from Mexico and have been successfully mitigated for years using a similar systems approach. As long as post-harvest practices are maintained as part of the overall systems approach, we are confident that the pests will not follow the pathway of importation. The avocado seed weevil *Heilipus trifasciatus* has behavior and biology very similar to *Heilipus lauri* and we are therefore similarly confident in the efficacy of the systems approach in connection with this pest. In addition, *Heilipus trifasciatus* is very uncommon in Colombia, which also decreases the chance of infestation.

The same commenter observed that fresh avocado fruit are considered by APHIS to be conditional non-hosts for the South American fruit fly (*Anastrepha fraterculus*), the guava fruit fly (*Anastrepha striata*), and old world fruit flies (*Ceratitis* spp.) based on the scientific literature and pest interception data. The commenter stated that this status does not mean that fresh Hass avocado fruit is not a host and therefore risk of infestation is present.

The commenter is correct that fresh Hass avocado fruit are considered by APHIS to be conditional non-hosts to fruit flies. The only time fresh Hass avocado fruit may become a fruit fly host is after the fruit has fallen from the tree or after harvesting. For that reason, we require that all fallen fruit be removed from production sites and destroyed weekly. Fallen fruit is also prohibited from entering the packinghouses. Harvested avocados are required to be safeguarded from fruit flies after harvest until the fruit is packed in pest-exclusionary packinghouses and shipped to the United States.

**Comments on the Systems Approach**

Based on the findings of the PRA, we determined that measures beyond standard port-of-entry inspection will be needed to mitigate the risks posed by the pests listed above. These measures were identified in the risk mitigation document (RMD) and were used as the basis for the requirements of the systems approach.

At various locations within the proposed regulations, PRA, and RMD, we referred to departments of Colombia, which are one of the administrative units of that country. The Colombian government requested that these references be replaced with the term ''municipalities.'' Municipalities are smaller administrative units which comprise Colombian departments.

We agree and have changed the language accordingly.

One commenter requested that fresh Hass avocado fruit from Colombia not be allowed into the State of Florida given that the climate in that State is conducive to the establishment of the listed pests.

We have determined, for the reasons described in the RMD that accompanied the proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of fresh Hass avocado fruit from Colombia. The commenter did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the commenter.

We stipulated that Hass avocado fruit that has fallen from the trees would have to be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. One commenter suggested that we require fallen fruit to be removed at shorter intervals.

The 7-day interval is consistent with the requirement we have successfully used for years in relation to the importation of fresh Hass avocado fruit from Mexico and Peru. We also note that the requirement sets out the 7-day interval as the maximum amount of time growers may allow to elapse between removing any fallen fruit. Growers may choose to remove fallen fruit at shorter intervals if they feel such action is warranted.

We will require the fresh Hass avocado fruit to be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States. These safeguards will have to remain intact

until arrival in the United States. One commenter asked that we remove this requirement for maritime shipments because those consignments are constantly protected in equivalent ways due to the nature of the transport.

We are making no changes as a result of this comment since we consider the sealed maritime containers in which all maritime shipments are transported to represent an adequate safeguarding measure as required by the regulations.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

**Executive Orders 12866 and 13771 and Regulatory Flexibility Act**

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Further, because this rule is not significant, it is not a regulatory action under Executive Order 13771.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the *Regulations.gov* Web site (see footnote 1 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Colombia has requested USDA authorization of market access for commercial shipments of fresh Hass avocado fruit into the continental United States under a systems approach. U.S. fresh Hass avocado fruit imports have increased significantly over the years. A growing U.S. population and growing Hispanic share of the population, greater awareness of the avocado's health benefits, year-round availability of fresh, affordable Hass avocado fruit, and greater disposable income have contributed to the increased demand.

The increase in demand over the past decade has contributed to domestic producers being able to maintain production levels despite the large increase in avocado imports. Annual U.S. fresh avocado fruit production, 2011/12 to 2015/16, averaged 426 million pounds, of which California accounted for approximately 84 percent, or over 356 million pounds. Nearly all of California's production is of the Hass variety.

Potential economic effects of this rule are estimated using a partial equilibrium model of the U.S. fresh Hass avocado fruit sector. Colombia is expected to export between 8,000 to 12,000 metric tons of fresh Hass avocado fruit, with 10,000 metric tons being most likely. If the United States were to import between 10,000 and 12,000 metric tons of fresh Hass avocado fruit considering a 20 percent displacement of fresh Hass avocado fruit imports from other sources, the decline in avocado prices may range from 1.0 percent to 1.5 percent. Consumer welfare gains of about $14 million to $22 million will outweigh producer welfare losses of about $4 million to $5 million, resulting in net welfare gains of about $11 million to $17 million. The lower-bound of 8,000 metric tons considers partial import displacement will occur, and price and welfare effects will be proportional to the net increase in U.S. fresh Hass avocado fruit imports if fresh Hass avocado fruit imported from Colombia were to displace fresh Hass avocado fruit imports from elsewhere (*e.g.,* Chile, Peru, or Mexico).

While APHIS does not have information on the size distribution of U.S. avocado producers, according to the Census of Agriculture, there were a total of 93,020 Fruit and Tree Nut farms (NAICS 1113) in the United States in 2012. The average value of agricultural products sold by these farms was less than $274,000, which is well below the Small Business Administration's small-entity standard of $750,000. It is reasonable to assume that most avocado farms qualify as small entities. Between 2002 and 2012, the number of avocado operations in California grew by approximately 17 percent, from 4,801 to 5,602 operations.

**Executive Order 12988**

This final rule allows fresh Hass avocado fruit to be imported into the United States from Colombia. State and local laws and regulations regarding fresh Hass avocado fruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0459, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

**E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

**List of Subjects for 7 CFR Part 319**

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–78 is added to read as follows:

**§ 319.56–78 Hass avocados from Colombia.**

Fresh Hass variety (*Persea americana* P. Mill) avocados may be imported into the continental United States from Colombia only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Heilipus lauri* Boheman, avocado seed weevil; *Heilipus trifasciatus,* avocado seed weevil; and *Stenoma catenifer,* avocado seed moth.

(a) *General requirements*—(1) *Operational workplan.* The national plant protection organization (NPPO) of Colombia must provide an operational workplan to APHIS that details the activities that the NPPO of Colombia and places of production and packinghouses registered with the NPPO of Colombia will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this

section. The operational workplan must include and describe the specific requirements as set forth in this section. APHIS will be directly involved with the NPPO of Colombia in monitoring and auditing implementation of the regulatory requirements in this section, including implementation of the operational workplan.

(2) *Registered places of production.* The fresh avocados considered for export to the continental United States must be grown by places of production that are registered with the NPPO of Colombia and that have been determined to be free from *H. lauri, H. trifasciatus,* and *S. catenifer* in accordance with this section.

(3) *Registered packinghouses.* The avocados must be packed for export to the continental United States in pest-exclusionary packinghouses that are registered with the NPPO of Colombia.

(4) Avocados may be imported in commercial consignments only.

(b) *Monitoring and oversight.* (1) The NPPO of Colombia must visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the grove sanitation requirements of this section and following pest control guidelines, when necessary, to reduce quarantine pest populations. Any personnel conducting trapping and pest surveys under this section at registered places of production must be hired, trained, and supervised by the NPPO of Colombia. APHIS may monitor the places of production if necessary.

(2) In addition to conducting fruit inspections at the packinghouses, the NPPO of Colombia must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of this section.

(3) If the NPPO of Colombia finds that a place of production or packinghouse is not complying with the requirements of this section, no avocados from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions have been implemented.

(4) The NPPO of Colombia must retain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(c) *Grove sanitation.* Avocado fruit that has fallen from the trees must be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. Fallen avocado fruit may not be included in field containers of fruit brought to the packinghouse to be packed for export.

(d) *Mitigation measures for H. lauri, H. trifasciatus, and S. catenifer.* Avocados must either be grown in places of production located in municipalities of Colombia that are designated as free of *H. lauri, H. trifasciatus,* and *S. catenifer* in accordance with § 319.56–5, or be grown in places of production that have been surveyed by the NPPO of Colombia and have been determined to be free of these pests. If the latter, the NPPO must maintain a buffer zone of 1 kilometer around the perimeter of the place of production, and must survey representative areas of the place of production and buffer zone for *H. lauri, H. trifasciatus,* and *S. catenifer* monthly, beginning no more than 2 months before harvest, in accordance with a survey protocol approved by APHIS. If one or more *H. lauri, H. trifasciatus,* or *S. catenifer* is detected during a survey of the place of production or buffer zone, the place of production will be suspended from the export program for avocados to the continental United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions to reestablish pest freedom have been implemented.

(e) *Harvesting requirements.* Harvested avocados must be placed in field cartons or containers that are marked with the official registration number of the place of production. The place of production where the avocados were grown must remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. The fruit must be moved to a registered packinghouse within 3 hours of harvest or must be protected from fruit fly introduction until moved. The fruit must be safeguarded in accordance with the operational workplan while in transit to the packinghouse and while awaiting packing.

(f) *Packinghouse requirements.* (1) During the time registered packinghouses are in use for packing avocados for export to the United States, the packinghouses may only accept avocados that are from registered places of production and that are produced in accordance with the requirements of this section.

(2) Avocados must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. All openings to the outside of the packinghouse must be screened or covered by a barrier that prevents pests from entering, as specified within the operational workplan. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(3) Fruit must be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States. These safeguards must remain intact until arrival in the United States.

(4) Shipping documents accompanying consignments of avocados from Colombia that are exported to the United States must specify the place of production at which the avocados were grown as well as the packing shed or sheds in which the fruit was processed and packed. This identification must be maintained until the fruit is released for entry into the United States.

(g) *NPPO of Colombia inspection.* Following any post-harvest processing, inspectors from the NPPO of Colombia must visually inspect a biometric sample of fruit from each place of production at a rate to be determined by APHIS. The inspectors must visually inspect for quarantine pests and must cut a portion of the fruit to inspect for *H. lauri, H. trifasciatus,* and *S. catenifer.* If a single quarantine pest is detected during this inspection protocol, the consignment from which the sample was taken is prohibited from being shipped to the United States. Additionally, if a single *H. lauri, H. trifasciatus,* or *S. catenifer* at any life stage is detected during this inspection, the place of production of the infested avocados will be suspended from the export program for avocados to the continental United States until APHIS and the NPPO of Colombia conduct an investigation and agree that appropriate remedial actions to reestablish pest freedom have been implemented.

(h) *Phytosanitary certificate.* Each consignment of Hass avocados from Colombia must be accompanied by a phytosanitary certificate issued by the NPPO of Colombia with an additional declaration stating that the avocados in the consignment were produced in accordance with this section and the operational workplan.

(Approved by the Office of Management and Budget under control number 0579–0459)

Done in Washington, DC, this 10th day of August 2017.

**Michael C. Gregoire,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2017–17211 Filed 8–14–17; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1205

**[AMS–CN–17–0041]**

### Cotton Research and Promotion Program: Procedures for Conduct of Sign-Up Period

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Correcting amendments.

**SUMMARY:** The Agricultural Marketing Service (AMS) is making corrections to the Code of Federal Regulations (CFR) by revising the authority citation for its regulation, Cotton Research and Promotion. In a final rule published in the **Federal Register** on June 24, 2015, changes were inadvertently made to remove a legal citation from the authority citation and to erroneously include an unnecessary authority citation after a section in AMS regulations. This document corrects those errors.

**DATES:** Effective August 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Shethir M. Riva, Director, Research and Promotion Staff, Cotton and Tobacco Program, Agricultural Marketing Service, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This document provides correcting amendments to the Cotton Research and Promotion Order (Order), found at 7 CFR part 1205, so that complete and appropriate authority is stated in the Order. In a final rule published in the **Federal Register** on June 24, 2015 (80 FR 36231), the rules and regulations regarding the procedures for the conduct of a sign-up period for eligible cotton producers and importers to request a continuance referendum on the 1991 amendments to the Order were revised. In that final rule, changes were inadvertently made to remove ''7 U.S.C. 7401'' from the authority citation. In addition, AMS discovered that an irrelevant authority citation ''Authority: 7 U.S.C. 2101–2118'' occurs after § 1205.29(c) in the CFR. This document corrects those errors by reinserting ''7 U.S.C. 7401'' into the authority citation that was removed from Title 7 of the CFR, part 1205, and by removing the unnecessary authority citation placed after § 1205.29(c) of the Order.

**List of Subjects in 7 CFR Part 1205**

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 1205 is amended as follows:

## PART 1205—COTTON RESEARCH AND PROMOTION

■ 1. The authority citation for part 1205 is revised to read as follows:

**Authority:** 7 U.S.C. 2101–2118; 7 U.S.C 7401.

**§ 1205.29 [Amended]**

■ 2. In § 1205.29, remove the following language ''(Authority: 7 U.S.C. 2101–2118.)'' from the end of the section.

Dated: August 9, 2017.

**Bruce Summers,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2017–17143 Filed 8–14–17; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 573

**[Docket No. FDA–2012–F–0949]**

### Food Additives Permitted in Feed and Drinking Water of Animals; Gamma-Linolenic Acid Safflower Oil

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or we or the Agency) is amending the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of oil from a variety of bioengineered safflower as a source of omega-6 fatty acids in complete dry adult maintenance dog food. This action is in response to a food additive petition filed by Arcadia Biosciences, Inc.

**DATES:** This rule is effective August 15, 2017. Submit either written or electronic objections and requests for a hearing by September 14, 2017. See the **ADDRESSES** section, and **SUPPLEMENTARY INFORMATION** section V of this document, for further information on the filing of objections.

**ADDRESSES:** You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. Electronic objections must be submitted on or before September 14, 2017. The *https://www.regulations.gov* electronic filing system will accept objections until midnight Eastern Time at the end of September 14, 2017. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic objections in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting objections. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your objection, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper objections submitted to the Dockets Management Staff, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2012–F–0949 for ''Food Additives Permitted in Feed and Drinking Water of Animals; Gamma-Linolenic Acid Safflower Oil.'' Received objections, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as

''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit an objection with confidential information that you do not wish to be made publicly available, submit your objections only as a written/paper submission. You should submit two copies in total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of objections. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your objections and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper objections received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Chelsea Trull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729, *chelsea.trull@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

In a notice published in the **Federal Register** of September 12, 2012 (77 FR 56175), FDA announced that we had filed a food additive petition (animal use) (FAP 2275) submitted by Arcadia Biosciences, Inc., 202 Cousteau Pl., Suite 200, Davis, CA 95618. The petition proposed that the regulations for food additives permitted in feed and drinking water of animals be amended to provide for the safe use of oil from a variety of bioengineered safflower (*Carthamus tinctorius* L.) in complete dry adult maintenance dog food. The safflower variety has been bioengineered to contain a gene from the water mold *Saprolegnia diclina* responsible for production of gamma-linolenic acid (GLA) in the seed oil. This GLA-enriched safflower oil will be used as a source of omega-6 fatty acids in dry food for adult dogs. The notice of petition provided for a 30-day comment period on the petitioner's request for categorical exclusion from preparing an environmental assessment or environmental impact statement.

## II. Conclusion

FDA concludes that the data establish the safety and utility of GLA safflower oil as a source of omega-6 fatty acids in complete dry adult maintenance dog food and that the food additive regulations should be amended as set forth in this document. This is not a significant regulatory action subject to Executive Order 12866.

## III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and documents we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 571.1(h), we will delete from the documents any materials that are not available for public disclosure.

## IV. Environmental Impact

The Agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment, nor an environmental impact statement is required.

## V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provision of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.*

**List of Subjects in 21 CFR Part 573**

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 573 is amended as follows:

## PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for part 573 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348.

■ 2. Add § 573.492 to read as follows:

### § 573.492 Gamma-linolenic acid safflower oil.

The food additive gamma-linolenic acid (all-*cis*-6,9,12-octadecatrienoic acid) (GLA) safflower oil contains an omega-6 fatty acid that may be safely used in animal food in accordance with the following conditions:

(a) The additive GLA safflower oil is produced in the oil obtained from whole seeds or partially dehulled seeds or both obtained from a *Carthamus tinctorius* L. safflower Centennial variety genetically engineered to express the delta-6-desaturase gene from *Saprolegnia diclina* Humphrey. The 453 amino acid, delta-6-desaturase enzyme converts the fatty acid linoleic acid to GLA during seed development. This GLA safflower oil may be safely used in complete dry adult maintenance dog food as a source of GLA and other omega-6 fatty acids in accordance with the following prescribed conditions:

(1) The GLA safflower oil obtained from the seeds of the genetically engineered safflower Centennial variety may be blended with oil obtained from seeds of non-engineered oleic acid safflower varieties in order to meet the specifications required for the additive

or the blend in paragraph (a)(2) of this section.

(2) The additive or a safflower oil blend containing the additive for use in animal food meets the following specifications:

(i) Crude fat content of the GLA safflower oil or its blend is not less than 99.5 percent.

(ii) GLA content is between 400 and 450 milligrams (mg) GLA per gram of the GLA safflower oil or its blend.

(iii) Total content of stearidonic acid and *cis, cis*-6,9-octadecadienoic acid in the GLA safflower oil or its blend must not exceed a total of 0.3 percent.

(3) Addition of GLA safflower oil, or its blend, to complete dry adult maintenance dog food must meet the following:

(i) Addition of the oil or its blend cannot provide more than 36 mg GLA per kilogram body weight of the dog per day in more than 86 mg of the GLA safflower oil or its blend. This maximum addition rate of the GLA safflower oil, or its blend, is 0.3 percent of a complete dry adult maintenance dog food containing 3,600 kilocalories of metabolizable energy per kilogram of food as-fed.

(ii) Adjustments must be made for dog food formulas of different caloric density and/or that are fed to specific weights, breeds, or dogs of different activity levels to meet the requirements of this paragraph.

(b) To assure safe use of the additive, in addition to other information required by the Federal Food, Drug, and Cosmetic Act, the label and labeling of the additive shall bear the following:

(1) The name, gamma-linolenic acid (GLA) safflower oil.

(2) A guarantee for the minimum content of gamma-linolenic acid.

(3) Adequate directions for use such that the finished animal food complies with the provisions of paragraph (a)(3) of this section.

Dated: August 4, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017–17214 Filed 8–14–17; 8:45 am]

**BILLING CODE 4164–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4022

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

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in September 2017. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

**DATES:** Effective September 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy (*Murphy.Deborah@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4400 ext. 3451. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 3451.)

**SUPPLEMENTARY INFORMATION:** PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminated single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

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

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for September 2017.[1]

The September 2017 interest assumptions under the benefit payments regulation will be 1.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for August 2017, these assumptions represent an increase of 0.25 percent in the immediate rate and are otherwise unchanged.

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

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during September 2017, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

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

**List of Subjects in 29 CFR Part 4022**

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

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

## PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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

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

■ 2. In Appendix B to part 4022, Rate Set 287, as set forth below, is added to the table.

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

* * * * *

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

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | | * | * | * | * | * | * |
| 287 | 9–1–17 | 10–1–17 | 1.00 | 4.00 | 4.00 | 4.00 | 7 | 8 |

■ 3. In Appendix C to part 4022, Rate Set 287, as set forth below, is added to the table.

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

* * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | | * | * | * | * | * | * |
| 287 | 9–1–17 | 10–1–17 | 1.00 | 4.00 | 4.00 | 4.00 | 7 | 8 |

Issued in Washington, DC.

**Deborah Chase Murphy,**

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

[FR Doc. 2017–17075 Filed 8–14–17; 8:45 am]

**BILLING CODE 7709–02–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket Number USCG–2017–0710]**

**RIN 1625–AA08**

## Special Local Regulation; Mobile River, Mobile, AL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation on the Mobile River, Mobile, AL. The special local regulation is needed to protect the persons participating in the Rubber Ducky Regatta marine event. This rule restricts transit into, through, and within the regulated area unless specifically authorized by the Captain of the Port Mobile.

**DATES:** This rule is effective from 9 a.m. until 1 p.m. on August 26, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0710 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Kyle D. Berry, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251–441–5940, email *kyle.d.berry@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Mobile
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We did not receive notice of the event until July 13, 2017. After a thorough review of the details for this event, including the number of anticipated spectators, the Coast Guard determined that a special local regulation was needed to protect persons and property in the vicinity of the area from potential hazards present with the Rubber Ducky Regatta marine event on this navigable waterway. This special local regulation must be established by August 26, 2017 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with this event.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Mobile (COTP) has determined that potential hazards associated with the marine event on August 26, 2017 will be a safety concern for anyone within the area of the Mobile River, Mobile, AL encompassing a half-mile radius of a point near 30°41′24.8″ N., 88°2′12.9″ W. This rule is needed to protect participants, spectators, and other persons and vessels during the marine event on navigable waters.

### IV. Discussion of the Rule

This rule establishes a special local regulation on August 26, 2017, which will be enforced between the hours of 9 a.m. and 1 p.m. The special local regulation takes place on the Mobile River, Mobile AL, encompassing a half-mile radius of a point at approximate location 30°41′24.8″ N., 88°2′12.9″ W.

The regulation is intended to protect participants, spectators, and other persons and vessels before, during, and after the marine event. No vessel or person will be permitted to enter, transit within or through, or exit the regulated area without obtaining permission from the COTP or a designated representative. Spectator vessels desiring to enter, transit through or within, or exit the regulated area may request permission to do so from the Patrol Commander (PATCOM). When permitted to transit the area vessels must follow restrictions within the regulated area as directed by the Coast Guard, and must operate at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the regulation. The special local regulation will take place on a mile stretch of navigable waterway, during a short duration of four hours on one day on the Mobile River, Mobile, AL encompassing a half-mile radius of a point at approximate location 30°41′24.8″ N., 88°2′12.9″ W. Moreover, the Coast Guard will issue Broadcast Notices to Mariners via VHF–FM marine channel 16 about the regulation so that waterway users may plan accordingly for transits during this restriction. The rule also allows vessels to seek permission from the COTP or a designated representative to enter the regulated area.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting for four hours on one day on the Mobile River, Mobile, AL encompassing a half-mile radius of a point at approximate location 30°41′24.8″ N., 88°2′12.9″ W. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination will be made available in the docket where indicated under **ADDRESSES**.

### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters.

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

**List of Subjects in 33 CFR Part 100**

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233

■ 2. Add § 100.35T08–0710 to read as follows:

**§ 100.35T08–0710 Special Local Regulation; Mobile River, Mobile, AL.**

(a) *Regulated area.* All navigable waters of the Mobile River, Mobile, AL encompassing a half-mile radius of a point at approximate location 30°41′24.8″ N., 88°2′12.9″ W.

(b) *Period of enforcement.* This rule will be enforced from 9 a.m. until 1 p.m. on August 26, 2017.

(c) *Special local regulations.* (1) Entry into, transit within or through, or exit from this area is prohibited unless authorized by the Captain of the Port Mobile (COTP) or the designated Patrol Commander. The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer will be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) The patrol commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the date and times of enforcement.

Dated: July 25, 2017.

**M.R. McLellan,**

*Captain, U.S. Coast Guard, Captain of the Port Mobile.*

[FR Doc. 2017–17215 Filed 8–14–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2016–0205]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, New Smyrna Beach, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the Coronado Beach (George Musson) Bridge across the Atlantic Intracoastal Waterway, mile 845, at New Smyrna Beach, FL. This rule will change the existing 20 minute opening schedule to a 30 minute opening schedule between 7 a.m. and 7 p.m. The rule will also add the local bridge name to the regulation published in the Code of Federal Regulations, George Musson/Coronado Beach (SR44).

**DATES:** This rule is effective September 14, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0205 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Eddie Lawrence with the Coast Guard; telephone 305–415–6946, email *Eddie.H.Lawrence@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
SNPRM Supplemental notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

### II. Background Information and Regulatory History

On May 10, 2016, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, New Smyrna Beach, FL in the **Federal Register** (81 FR 28791). We received 5 comments on this rule.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 499.

George Musson/Coronado Beach (SR 44) bridge, mile 845 at New Smyrna Beach is a bascule bridge with a vertical clearance of 24 feet in the closed position and unlimited in the open position. Per 33 CFR 117.261(h), the current operating schedule states the bridge shall open on signal, except that from 7 a.m. until 7 p.m., each day of the week, the draw need only open on the hour, twenty minutes past the hour and forty minutes past the hour.

On April 25, 2015, the City of New Smyrna Beach requested the Coast Guard review the current operating schedule for the Coronado Beach (George Musson) Bridge (SR 44) to determine whether a change could be

made to improve vehicle traffic flow in the area. The bridge owner, Florida Department of Transportation, was also consulted on this issue and it concurred with the recommendation to change the current schedule, from an opening every 20 minutes to an opening every 30 minutes; every day of the week.

This regulatory action determination is based on the limited impact that it will have on vessel traffic on the Atlantic Intracoastal Waterway. This rule changes the opening schedule from three times an hour to two times an hour. The bridge logs show that the Bridge generally only opens twice an hour already because vessel traffic volumes do not require three openings per hour. Therefore, there should be no actual change to the number of bridge openings per hour. Also, vessels that can transit under the bridge without an opening may do so at any time. Emergency vessels and tugs with tows can still request openings at any time.

## IV. Discussion of Comments, Changes and the Final Rule

There were five comments received during the comment period. Three commenters were in favor of the proposed rule and two commenters were opposed the proposed changes. These two commenters stated that changing the bridge schedule would not alleviate the City's traffic problems, and might impact vessel traffic during peak transient seasons. The Coast Guard agrees in part that in the majority of cases, a change to a bridge regulation will not solve a traffic problem. However, the purpose of the final rule is to balance the needs of all modes of transportation. As this bridge opens mostly two times an hour rather than the permitted three times an hour now, this will be a minor adjustment for vessel traffic. For these reasons, no changes have been made to the final rule.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the continued ability for vessels to transit the bridge during the twice-an-hour opening schedule. Vessels in distress, Public vessels of the United States and tugs with tows must be passed at any time.

### *B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this final rule would not have a significant economic impact on any vessel owner or operator as there are generally only two openings an hour currently. This regulation changes the schedule from three times an hour to twice an hour.

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

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

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

### *C. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Government*

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.261(h) to read as follows:

**§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.**

* * * * *

(h) *George Musson/Coronado Beach (SR 44) bridge, mile 845 at New Smyrna Beach.* The George Musson/Coronado Beach (SR 44) bridge, mile 845, shall open on signal, except that from 7 a.m. to 7 p.m., the draw shall open on the hour and half-hour, seven days a week.

* * * * *

Dated: August 1, 2017.

**P.J. Brown,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 2017–17216 Filed 8–14–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2017–0722]**

### Drawbridge Operation Regulation; Housatonic River, Stratford, CT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Metro-North (Devon) Bridge across the Housatonic River, mile 3.9, at Stratford, Connecticut. The deviation is necessary to complete repairs to the movable span and allows the bridge to remain in the closed position for approximately one month during weekdays and weeknights while opening during weekends if provided 24 hours of advance notice.

**DATES:** This deviation is effective from 8 a.m. on September 11, 2017 to 2 p.m. on October 6, 2017.

**ADDRESSES:** The docket for this deviation, USCG–2017–0722 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email James M. Moore, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard; telephone (212) 514–4334, email *James.M.Moore2@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Connecticut Department of Transportation, on behalf of Metro-North Railroad, the owner of the bridge, requested a temporary deviation in order to facilitate repairs to the headblocks in the movable span.

The Metro-North (Devon) Bridge across the Housatonic River, mile 3.9 at Stratford, Connecticut offers mariners a vertical clearance of 19 feet at mean high water and 25 feet at mean low water in the closed position. Horizontal clearance is 83 feet. The existing drawbridge regulations are listed at 33 CFR 117.207(b).

This temporary deviation will allow the draw of the Devon Railroad Bridge to remain closed on weekdays on a weekly basis from 8 a.m. September 11, 2017 through 2 p.m. October 6, 2017 with openings offered on weekends when 24 hours of advance notice is provided.

Under this temporary deviation the Metro-North (Devon) Bridge will operate as follows:

a. The draw will remain closed for all vessels that would otherwise require and opening from 8 a.m. on Monday, September 11, 2017, through 2 p.m. Friday, September 15, 2017. This closure will repeat Monday through Friday of each week until October 6, 2017.

b. The draw will open on 24 hours advance notice for all vessels requiring such an opening from 2 p.m. on Friday, September 15, 2017 through 8 a.m. on Monday, September 18, 2017, and repeat each Friday through Monday of each weekend until October 2, 2017.

The waterway is largely transited by seasonal recreational traffic. Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will inform waterway users through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so vessel operators are allowed the opportunity to arrange their transits so as to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 10, 2017.

**Christopher J. Bisignano,**

*Supervisory Bridge Management Specialist, First Coast Guard District.*

[FR Doc. 2017–17201 Filed 8–14–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2017–0720]**

### Drawbridge Operation Regulation; China Basin, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the 3rd Street Drawbridge across China Basin, mile 0.0, at San Francisco, CA. The deviation is necessary to allow participants to

cross the bridge during the San Francisco Giant Race Half Marathon. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

**DATES:** This deviation is effective from 5 a.m. to noon on August 27, 2017.

**ADDRESSES:** The docket for this deviation, USCG–2017–0720 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *Carl.T.Hausner@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The City of San Francisco has requested a temporary change to the operation of the 3rd Street Drawbridge, over China Basin, mile 0.0, at San Francisco, CA. The drawbridge navigation span provides a vertical clearance of 3 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal if at least one hour notice is given, as required by 33 CFR 117.149. Navigation on the waterway is recreational.

The drawspan will be secured in the closed-to-navigation position from 5 a.m. to noon. on August 27, 2017, to allow participants to cross the bridge during the San Francisco Giant Race Half Marathon. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 8, 2017.

**Carl T. Hausner,**

*District Bridge Chief, Eleventh Coast Guard District.*

[FR Doc. 2017–17188 Filed 8–14–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2017–0769]**

## Security Zone; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard will enforce the Sitcum Waterway Security Zone, Commencement Bay, Washington, from Noon on August 12, 2017, through 11:59 p.m. on August 19, 2017, unless cancelled sooner by the Captain of the Port. This action is necessary for the security of Department of Defense assets and military cargo in the navigable waters of Puget Sound and adjacent waters. Entry into this security zone is prohibited unless authorized by the Captain of the Port or their Designated Representative, or is otherwise provided by exemption or waiver provisions in these security zone regulations.

**DATES:** The regulations in 33 CFR 165.1321 will be enforced from noon on August 12, 2017, through 11:59 p.m. on August 19, 2017, unless cancelled sooner by the Captain of the Port.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of enforcement, call or email Lieutenant Junior Grade Ellie Wu, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce regulations in 33 CFR 165.1321 for the Sitcum Waterway Security Zone identified in paragraph (c)(2) of that section, from August 12, 2017, at Noon through 11:59 p.m. on August 19, 2017, unless cancelled sooner by the Captain of the Port. The security zone is necessary to help provide for the security of Department of Defense assets and military cargo located in those waters during the enforcement period. Entry into the security zone is prohibited unless authorized under 33 CFR 165.1321. Vessels wishing to enter the security zone may request permission from the Captain of the Port or a Designated Representative as outlined in § 165.1321.

This notice of enforcement is issued under authority of 33 CFR 165.1321 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via marine information broadcasts and on-scene assets.

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

Dated: August 8, 2017.

**Linda A. Sturgis,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 2017–17190 Filed 8–14–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2017–0759]**

## Safety Zone, Coast Guard Exercise Area, Hood Canal, Washington

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard will enforce the safety zone around vessels involved in Coast Guard training exercises in Hood Canal, WA from November 6, 2017 through November 10, 2017, unless cancelled sooner by the Captain of the Port. This is necessary to ensure the safety of the maritime public and vessels participating in these exercises. During the enforcement period, entry into this zone is prohibited unless authorized by the Captain of the Port or her Designated Representative.

**DATES:** The regulations in 33 CFR 165.1339 will be enforced from 12:01 a.m. on November 6, 2017, through 11:30 p.m. on November 10, 2017.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email Petty Officer Zachary Spence, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone around vessels involved in Coast Guard training exercises in Hood Canal, WA set forth in 33 CFR 165.1339, from 12 a.m. on November 6, 2017 through 11:30 p.m. on November 10, 2017, unless cancelled sooner by the Captain of the Port. Under the provisions of 33 CFR 165.1339, no person or vessel may enter or remain within 500 yards of any vessel involved in Coast Guard training exercises while such vessel is transiting Hood Canal, WA between Foul Weather Bluff and the entrance to Dabob Bay, unless authorized by the Captain of the Port or his Designated Representative. In addition, the regulation establishes requirements for all vessels to obtain permission for entry during the enforcement period by contacting the on-scene patrol commander on VHF channel 13 or 16, or the Sector Puget Sound Joint Harbor Operations Center at 206–217–6001. Members of the maritime public will be able to identify participating vessels as those flying the Coast Guard Ensign. The COTP may also be assisted in the enforcement of the zone by other federal, state, or local agencies.

This notice of enforcement is issued under authority of 33 CFR 165.1339 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, and on-scene assets. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: August 8, 2017.

**Linda A. Sturgis,**

*Captain, U.S. Coast Guard, Captain of the Port Puget Sound.*

[FR Doc. 2017–17141 Filed 8–14–17; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2017–0218; FRL–9965–90–Region 9]**

## Approval of California Air Plan Revisions, Placer County Air Pollution Control District

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern the District's demonstration regarding Reasonably Available Control Technology (RACT) requirements for the 1997 and 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS), and negative declarations for the polyester resin source category for the 2008 8-hour ozone standard. We are approving the submitted SIP revisions under the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on September 14, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2017–0218. All documents in the docket are listed on the *https://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, (415) 947–4126, *Law.Nicole@epa.gov.*

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

### Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

### I. Proposed Action

On June 15, 2017 (82 FR 27456), the EPA proposed to approve the following documents into the California SIP.

| Local agency | Document | Adopted | Submitted |
|---|---|---|---|
| PCAPCD | 2006 Reasonably Available Control Technology State Implementation Plan Update Analysis (''2006 RACT SIP''). | 08/10/06 | 07/11/07 |
| PCAPCD | 2014 Reasonably Available Control Technology State Implementation Plan Analysis (''2014 RACT SIP''). | 04/10/14 | 07/18/14 |

PCAPCD's July 18, 2014 submittal also included negative declarations for the Polyester Resin source category covered by the following control techniques guidelines (CTGs): EPA–450/3–83–008, Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins and EPA–450/3–83–006, Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment. The District certified that it had no sources subject to the CTG documents.

We proposed to approve these documents because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the documents and our evaluation.

### II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

### III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these documents, including the negative declarations into the California SIP.

### IV. 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 action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

• Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• 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).

In addition, 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 31, 2017.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(382)(ii)(D) and (c)(449)(ii)(B) to read as follows:

**§ 52.220 Identification of plan—in part.**

* * * * *

(c) * * *

(382) * * *

(ii) * * *

(D) Placer County Air Pollution Control District.

(*1*) 2006 Reasonably Available Control Technology State Implementation Plan Update Analysis, as adopted on August 10, 2006.

* * * * *

(449) * * *

(ii) * * *

(B) Placer County Air Pollution Control District.

(*1*) 2014 Reasonably Available Control Technology State Implementation Plan Analysis, as adopted on April 10, 2014.

* * * * *

■ 3. Section 52.222 is amended by adding paragraph (a)(4)(iv) to read as follows:

**§ 52.222 Negative declarations.**

(a) * * *

(4) * * *

(iv) Polyester Resin was submitted on July 18, 2014 and adopted on April 10, 2014.

* * * * *

[FR Doc. 2017–16823 Filed 8–14–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2017–0078; FRL–9965–60–Region 4]**

### Air Plan Approval; Georgia: New Source Review and Permitting Updates

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve changes to the Georgia State Implementation Plan (SIP) to revise new source review (NSR) and miscellaneous permitting regulations. EPA is approving portions of SIP revisions submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (GA EPD), on December 15, 2011, July 25, 2014, and November 12, 2014. This action is being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This direct final rule is effective October 16, 2017 without further notice, unless EPA receives adverse comment by September 14, 2017. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0078 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Akers can be reached via telephone at (404) 562–9089 or via electronic mail at *akers.brad@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. What action is the Agency taking?

On December 15, 2011, July 25, 2014, and November 12, 2014, GA EPD submitted SIP revisions to EPA for approval that involve changes to Georgia's regulations to make them consistent with federal requirements for NSR permitting, among other changes. In this action, EPA is approving the portions of these Georgia submissions that make changes to the following GA EPD regulations: Rule 391–3–1–.02(7)—''Prevention of Significant Deterioration of Air Quality (PSD),'' which applies to the construction and modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA; and Rule 391–3–1–.03(8)—''Permit Requirements,'' which applies generally to the permitting program, including permitting requirements that apply to the construction and modification of any major stationary sources in nonattainment areas (NAAs) as required by part D of title I of the CAA, referred to as nonattainment new source review (NNSR). Georgia's PSD regulations at Rule 391–3–1–.02(7) were last updated in the SIP on April 9, 2013. *See* 78 FR 21065. Georgia's NNSR regulations at Rule 391–3–1–.03(8) were last updated in the SIP on November 22, 2010 (75 FR 71020).

Georgia's December 15, 2011 SIP revision modifies the definition of ''Net Emissions Increase'' to remove an obsolete reference by deleting subparagraph (III) in Rule 391–3–1–.03(8)(g)(1)(iii) and by making minor grammatical edits to subparagraphs (I) and (II) to address the deletion of subparagraph (III). Georgia's July 25, 2014 SIP revision removes an obsolete provision at Rule 391–3–1–.03(8)(d), which applied to permits issued prior to July 1, 1979. The revision replaces the text in paragraph (8)(d) with the text ''[reserved]''.

Georgia's November 12, 2014 SIP revision makes changes to the PSD regulations to reflect changes to the federal PSD regulations at 40 CFR 52.21, including provisions promulgated in the following federal rules: ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$): [1] Amendment to the Definition of 'Regulated NSR Pollutant' Concerning Condensable Particulate Matter,'' Final Rule, 77 FR 65107 (October 25, 2012) (hereinafter referred to as the $PM_{2.5}$ Condensables Correction Rule). Georgia's November 12, 2014 SIP revision also makes changes to Georgia's PSD program to incorporate plantwide applicability limits (PALs) for greenhouse gases (GHGs) as allowed in the federal rule entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits.'' *See* 77 FR 41051 (July 12, 2012) (hereinafter referred to as the GHG Step 3 Rule). The $PM_{2.5}$ Condensables Correction Rule and the GHG Step 3 Rule are discussed in Section 2, below.

At this time, EPA is not acting on the changes included in the December 15, 2011, submittal made to Rule 391–3–1–.01—''Definitions,'' at paragraph (cccc); Rule 391–3–1–.03 at paragraph (11)—''Permit by Rule;'' and to the NNSR program at Rule 391–3–1–.03(8)(c), (e), and certain portions of (g), that adopted provisions related to $PM_{2.5}$, and modified certain provisions related to ozone.[2] The revision made to Rule 391–3–1–.02, ''Provisions,'' at paragraph (2)(uuu)—''$SO_2$ Emissions from Electric Utility Steam Generating Units,'' was withdrawn from the December 15, 2011, submittal and EPA consideration on December 9, 2014. The changes made to Rule 391–3–1–.02(4)—''Ambient Air Standards,'' included in the December 15, 2011, submittal, were approved in a May 16, 2013, final rule (78 FR 28744). EPA also approved changes made to Rule 391–3–1–.01—''Definitions,'' at paragraph (nnnn), as included in the December 15, 2011, submittal, in a July 31, 2015 direct final rule. *See* 80 FR 45609.

EPA is not acting on the following changes included in the July 25, 2014 submittal: Rule 391–3–1–.02(2)(a)—''General Provisions;'' Rule 391–3–1–.02(2)(e)—''Particulate Emissions from Manufacturing Processes;'' Rule 391–3–1–.02(l)—''Conical Burners;'' Rule 391–3–1–.02(o)—''Cupola Furnaces for Metallurgical Melting;'' Rule 391–3–1–.02(p)—''Particulate Emissions from Kaolin and Fuller's Earth Processes;'' Rule 391–3–1–.02(q)—''Particulate Emissions from Cotton Gins;'' Rule 391–3–1–.02(gg)—''Kraft Pulp Mills;'' Rule 391–3–1–.02(4)—''Ambient Air Standards;'' or Rule 391–3–1–.02(6)(a)—''Specific Monitoring and Reporting Requirements for Particular Sources.'' EPA approved changes to Rule 391–3–1–.01—''Definitions,'' at paragraph (llll), as modified in the July 25, 2014 submittal, on October 5, 2016 (81 FR 69019). EPA also approved changes made to Rule 391–3–1–.01—''Definitions,'' at (nnnn) in a January 5, 2017 direct final rule. *See* 82 FR 1206.

[1] Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be ''fine particles'' and are also known as $PM_{2.5}$. Fine particles in the atmosphere are made up of a complex mixture of components including sulfate; nitrate; ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as ''crustal'' material, although it may contain material from other sources. The health effects associated with exposure to $PM_{2.5}$ include potential aggravation of respiratory and cardiovascular disease (*i.e.,* lung disease, decreased lung function, asthma attacks and certain cardiovascular issues). On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using $PM_{2.5}$ as the indicator. Previously, EPA used $PM_{10}$ (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting an annual standard at a level of 15.0 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$(62 FR 38652). At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$(71 FR 61236). On January 15, 2013, EPA published a final rule revising the annual $PM_{2.5}$ NAAQS to 12 $\mu g/m^3$(78 FR 3086).

[2] There are currently no areas in Georgia designated as nonattainment for any $PM_{2.5}$ or ozone NAAQS. Regarding Rule 391–3–1–.03(8)(g), EPA is not acting on the changes to (g)(1)(iii), (g)(2)(i), (g)(5)(i), and (g)(6)(i) that reference subparagraph 8(c)16.(ii). As discussed in Section III.A., below, EPA is only acting on the changes to Rule 391–3–1–.03(8)(g) in the December 15, 2011 submittal that remove an obsolete reference to clean units.

EPA is not acting on the changes to Rule 391–3–1–.01—''Definitions,'' at paragraphs (llll) and (nnnn), and Rule 391–3–1–.02(4)—''Ambient Air Standards,'' as included in the November 12, 2014 submittal, because EPA approved them on July 31, 2015. *See* 80 FR 45609.

EPA is not acting on a change included in the November 12, 2014 submittal at Rule 391–3–1–.02(7)(a)(2)(iv). This provision would have incorporated by reference the federal definition of the term ''subject to regulation,'' but provided that incorporation of the federal regulation would be automatically rescinded if certain triggering events occurred. EPA previously disapproved the portion of a January 13, 2011 SIP revision that sought to include Rule 391–3–1–.02(7)(a)(2)(iv) in the SIP. *See* 81 FR 11438 (March 4, 2016). Because this provision is not part of Georgia's SIP, EPA is not acting on the State's proposed change to that provision.

Finally, EPA is not acting on the changes included in the November 12, 2014 submittal regarding a new definition of the term ''regulated NSR pollutant'' at Rule 391–3–1–.02(7)(a)(2)(ix) because Georgia withdrew these changes from EPA's consideration in a December 1, 2016 letter.[3]

## II. Background

### *A. 2002 NSR Reform and Clean Units*

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52 regarding the CAA's PSD and NNSR programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on reconsideration of the December 31, 2002, final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.'' The 2002 NSR Reform Rules made changes to two areas of the NSR programs that are relevant to this action. First, the rule allowed major stationary sources to comply with plant-wide applicability limits (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program. A PAL establishes a site-specific plantwide—rather than unit-specific—emission level for a pollutant, which allows the source to make changes to individual units at the facility without triggering the requirements of the PSD program, provided that facility-wide emissions do not exceed the PAL. Second, the rule provided a new applicability provision for emissions units that are designated ''clean units.'' On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules, which clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002) and *https://www.epa.gov/nsr/nsr-regulatory-actions#nsrreform.*

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules. *See* 45 FR 52676 (August 7, 1980). On June 24, 2005, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision vacating the portion of the rule pertaining to clean units. *New York* v. *U.S. EPA,* 413 F.3d 3 (D.C. Cir. 2005). On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from federal law all provisions pertaining to clean units.

### *B. 2008 NSR $PM_{2.5}$ Rule*

On May 16, 2008, EPA finalized a rule titled ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' Final Rule, 73 FR 28321 (May 16, 2008) (hereinafter referred to as the 2008 NSR $PM_{2.5}$ Rule). The 2008 NSR $PM_{2.5}$ Rule, which revised the federal NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and NAAs. Among other things, the rule revised the definition of ''regulated NSR pollutant'' for PSD to add a paragraph providing that ''particulate matter (PM) emissions, $PM_{2.5}$ emissions and $PM_{10}$ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures'' and that on or after January 1, 2011, ''such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and $PM_{10}$ in permits.'' *See* 73 FR 28321 at 28348. A similar paragraph added to the NNSR rule does not include ''particulate matter (PM) emissions.'' *See* 40 CFR 51.165(a)(1)(xxxvii)(D).

On October 25, 2012, EPA took final action to amend the definition of ''regulated NSR pollutant'' promulgated in the 2008 NSR $PM_{2.5}$ Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and Appendix S to 40 CFR 51. *See* 77 FR 65107. The $PM_{2.5}$ Condensables Correction Rule removed the inadvertent requirement in the 2008 NSR $PM_{2.5}$ Rule that the measurement of condensable particulate matter be included as part of the measurement and regulation of ''particulate matter emissions'' under the PSD program. The term ''particulate matter emissions'' includes filterable particles that are larger than $PM_{2.5}$ or $PM_{10}$ and is an indicator measured under various New Source Performance Standards (NSPS). *See* 40 CFR part 60.[4]

The PSD requirements of the 2008 NSR $PM_{2.5}$ Rule were approved into the Georgia SIP on September 8, 2011. *See* 76 FR 55572. The November 12, 2014 submittal makes the correction to the condensables provision for Georgia's PSD program. See Section III, below, for EPA's analysis of Georgia's submittals.

### *B. Greenhouse Gases and Plantwide Applicability Limits*

On January 2, 2011, GHG emissions were, for the first time, covered by the PSD and title V operating permit programs.[5] To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA PSD and title V programs, on June 3, 2010, the EPA published a final rule entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (hereinafter referred to as the GHG Tailoring Rule). *See* 75 FR 31514. In Step 1 of the GHG Tailoring Rule, which began on January 2, 2011, the EPA limited application of PSD and title V requirements to sources of GHG emissions only if they were subject to PSD or title V ''anyway'' due to their emissions of pollutants other than GHGs. These sources are referred to as ''anyway sources.''

In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG

[3] In the December 1, 2016 letter, Georgia also withdrew changes regarding the term ''regulated NSR pollutant'' at Rule 391–3–1–.02(7)(a)(2)(ix). The December 1, 2016 letter is included in the docket for this action.

[4] In addition to the NSPS, states regulated ''particulate matter emissions'' for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

[5] See the rule entitled ''Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs,'' Final Rule, 75 FR 17004 (April 2, 2010).

emissions above the level in the EPA regulations. EPA generally described the sources covered by PSD during Step 2 of the GHG Tailoring Rule as ''Step 2 sources'' or ''GHG-only sources.''

Subsequently, EPA published the GHG Step 3 Rule on July 12, 2012. *See* 77 FR 41051. In this rule, EPA decided against further phase-in of the PSD and title V requirements for sources emitting lower levels of GHG emissions. Thus, the thresholds for determining PSD applicability based on emissions of GHGs remained the same as established in Step 2 of the Tailoring Rule.

The GHG PALs portion of the July 12, 2012 final rule revised EPA regulations under 40 CFR part 52 for establishing PALs for GHG emissions. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without triggering the requirements of the PSD program, provided that emissions do not exceed the PAL level. Under EPA's interpretation of the federal PAL provisions, such PALs are already available under PSD for non-GHG pollutants and for GHGs on a mass basis. EPA revised the PAL regulations to allow for GHG PALs to be established on a carbon dioxide equivalent ($CO_2e$)[6] basis as well. *See* 77 FR 41051 (July 12, 2012). EPA finalized these changes in an effort to streamline federal and SIP PSD permitting programs by allowing sources and permitting authorities to address GHGs using PALs in a manner similar to the use of PALs for non-GHG pollutants.

On June 23, 2014, the U.S. Supreme Court addressed the application of stationary source permitting requirements to GHG emissions in *Utility Air Regulatory Group (UARG)* v. *EPA,* 134 S. Ct. 2427 (2014). The Supreme Court upheld EPA's regulation of Step 1—or ''anyway'' sources—but held that EPA may not treat GHGs as air pollutants for the purposes of determining whether a source is a major source (or a modification thereof) and thus require the source to obtain a PSD or title V permit. Therefore, the Court invalidated PSD and title V permitting requirements for Step 2 sources.

In accordance with the Supreme Court decision, on April 10, 2015, the D.C. Circuit issued an Amended Judgment vacating the regulations that implemented Step 2 of the GHG Tailoring Rule, but not the regulations that implement Step 1 of the GHG Tailoring Rule. *Coalition for Responsible Regulation, Inc.* v. *EPA,* 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). With respect to Step 2 sources, the D.C. Circuit's Judgment vacated the EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification.'' *Id.* at 7–8.

EPA promulgated a good cause final rule on August 19, 2015, entitled ''Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements.'' *See* 80 FR 50199 (August 19, 2015) (hereinafter referred to as the Good Cause GHG Rule). The rule removed from the federal regulations the portions of the PSD permitting provisions for Step 2 sources that were vacated by the D.C. Circuit (*i.e.,* 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v)). EPA therefore no longer has the authority to conduct PSD permitting for Step 2 sources, nor can we approve provisions submitted by a state for inclusion in its SIP providing this authority. In addition, on October 3, 2016, EPA proposed to revise provisions in the PSD permitting regulations applicable to GHGs to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized. *See* 81 FR 68110.

Georgia's November 12, 2014 SIP revision adopts the GHG Step 3 Rule. EPA's analysis of the submittal is included in Section III of this rulemaking.

## III. Analysis of the State's Submittals

### *A. Georgia's December 15, 2011 Submittal*

Georgia currently has a SIP-approved NNSR program at Rules 391–3–1–.03(8)(c) and (g). The change to Rule 391–3–1–.03(8)(g) in the December 15, 2011 submittal removes an obsolete reference to clean units by deleting subparagraph (III) in Rule 391–3–1–.03(8)(g)(1)(iii) and by making minor grammatical edits to subparagraphs (I) and (II) to address the deletion of subparagraph (III). Georgia never adopted the Clean Unit provisions, and the language in subparagraph (III) expressly excludes incorporation of 40 CFR 51.165(a)(1)(vi)(C)(3) and (E)(5)—related to increases and decreases at clean units—into the State's definition of ''Net Emissions Increase.'' Subparagraph (III) is now obsolete, because as discussed in Section II.A., above, clean unit provisions were removed from the federal NSR rules on June 13, 2007 (72 FR 32526). Therefore, EPA is approving this change to Georgia's SIP-approved NNSR rules.

### *B. Georgia's July 25, 2014 Submittal*

Georgia's July 25, 2014 submittal makes an administrative edit to Georgia Rule 391–3–1–.03(8) for generally applicable permitting requirements. GA EPD deletes the text from paragraph (d) that required that Section 129A of the CAA, governing new source performance standards for solid waste combustion, must be met before permitting sources to be constructed or modified prior to July 1, 1979. The date for this requirement has passed, so the provision is obsolete. Georgia's non-SIP rules have other, more current provisions pursuant to CAA section 129. EPA has concluded that this revision will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act, and is approving this administrative change to the SIP.

### *C. Georgia's November 12, 2014 Submittal*

Georgia currently has a SIP-approved PSD program at Rule 391–3–1–.02(7), including the regulation of GHGs under Step 1 and Step 2 pursuant to the GHG Tailoring Rule. The November 12, 2014 submittal revises the PSD regulations by changing the incorporation by reference date of 40 CFR 52.21 at Rule 391–3–1–.02(7)(a)(1) from July 20, 2011, to December 9, 2013.[7] The effect of changing this incorporation by reference date is to adopt two significant changes

[6] $CO_2$ equivalent ($CO_2e$) emissions refers to emissions of six recognized GHGs other than $CO_2$ which are scaled to equivalent $CO_2$ emissions by relative global warming potential values, then summed with $CO_2$ to determine a total equivalent emissions value. *See* 40 CFR 51.166(48)(ii) and 52.21(49)(ii).

[7] EPA has not acted on, and is not currently acting on, the portion of Georgia's September 15, 2008 SIP revision that seeks to incorporate into the SIP, through a revision to Georgia Rule 391–3–1–.02(7)(a)(2)(iii) (state effective on September 11, 2008), the provisions amended in the Ethanol Rule (72 FR 24060) to exclude facilities that produce ethanol through a natural fermentation process from the definition of ''chemical process plants'' in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t). Therefore, today's action does not IBR those provisions into the SIP. Additionally, today's action does not incorporate into the SIP the provisions at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(*c*) that were stayed indefinitely by the Fugitive Emissions Interim Rule, 76 FR 17548 (March 30, 2011). As discussed in an October 26, 2016 letter from GA EPD, these stayed provisions were not incorporated into Georgia's SIP through EPA's September 9, 2011 approval of the IBR update to Georgia Rule 391–3–1–.02(7) in Georgia's January 13, 2011 SIP revision because these provisions were initially stayed on September 30, 2009 (74 FR 50115). GA EPD's October 26, 2016 letter is located in the docket for this action.

to the PSD rules: (1) The adoption of GHG PAL provisions pursuant to the GHG Step 3 Rule; and (2) the incorporation of the correction to the $PM_{2.5}$ condensables provision as promulgated in the $PM_{2.5}$ Condensables Correction Rule.

Georgia's November 12, 2014 submittal incorporates these two federal PSD provisions as of December 9, 2013, which is prior to the *UARG* decision, the D.C. Circuit's Amended Judgment in *Coalition for Responsible Regulation,* and EPA's August 19, 2015 Good Cause GHG Rule. Therefore, Georgia's adoption by reference of 40 CFR 52.21 as of December 9, 2013, did not include the August 19, 2015 revisions to the Federal PSD program removing the PSD provisions vacated by the Amended Judgment. Prior to this action, the Georgia SIP contains the vacated GHG provisions (through the incorporation by reference of a previous version of 40 CFR 52.21) and so EPA's approval of the CFR incorporation by reference update to December 9, 2013, does not change the Georgia SIP with respect to the vacated provisions. However, the now-vacated portions of 40 CFR 52.21 incorporated into the Georgia SIP-approved PSD program are no longer enforceable. EPA believes that this portion of the Georgia SIP should be revised in light of the D.C. Circuit's Amended Judgment, but EPA also notes that these provisions may not be applied even prior to their removal from the Georgia SIP because the court decisions described above have determined these parts of EPA's regulations are unlawful. EPA therefore proposes to approve the update to the incorporation by reference of PSD regulations with the understanding that the GHG provisions that have been vacated by the court decisions may not be applied after those decisions.

The November 12, 2014 SIP revision seeks to add to the Georgia SIP elements of the EPA's July 12, 2012 rule implementing Step 3 of the phase-in of PSD permitting requirements for GHGs described in the GHG Step 3 Rule. Specifically, the incorporation of the GHG Step 3 Rule provisions will allow GHG-emitting sources to obtain PALs for their GHG emissions on a $CO_2e$ basis. As explained in Section II.B above, a PAL establishes a site-specific plantwide emission level for a pollutant, which allows the source to make changes to individual units at the facility without triggering the requirements of the PSD program, provided that facility-wide emissions do not exceed the PAL.

The federal GHG PAL regulations include provisions that apply solely to GHG-only, or Step 2, sources. Some of these provisions may no longer be applicable in light of the Supreme Court's decision in *UARG* and the D.C. Circuit's Amended Judgment. Since the Supreme Court has determined that sources and modifications may not be defined as ''major'' solely on the basis of GHGs emitted or increased, PALs for GHGs may no longer have value in some situations where a source might have triggered PSD based on GHG emissions alone. EPA has proposed action in an October 3, 2016 proposed rule to clarify the GHG PAL rules. *See* 81 FR 68110. However, PALs for GHGs may still have a role to play in determining whether a source that is already subject to PSD for a pollutant other than GHGs should also be subject to PSD for GHGs.

Moreover, the existing GHG PALs regulations do not add new requirements for sources or modifications that only emit or increase greenhouse gases above the major source threshold or the 75,000 ton per year GHG level in 40 CFR 52.21(b)(49)(iv). Rather, the PALs provisions provide increased flexibility to sources that wish to address their GHG emissions in a PAL. Since this flexibility may still be valuable to sources in at least one context described above, the Agency believes that it is appropriate to approve these provisions into the Georgia SIP at this time. EPA has concluded that approving this change into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. EPA discussed the effects of PALs in the Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis). The Supplemental Analysis explained, ''[t]he EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits.'' Supplemental Analysis at 6; *see also* 76 FR 49313, 49315 (August 10, 2011). EPA is therefore approving the PALs provisions into the Georgia SIP, as incorporated by reference.

By changing the incorporation by reference date for Rule 391–3–1–.02(7) in the November 12, 2014 SIP revision, Georgia also adopts changes made by EPA in the $PM_{2.5}$ Condensables Correction Rule. *See* 77 FR 65107 (October 25, 2012). As explained in Section II.A, the federal rule corrected an inadvertent error in the definition of ''regulated NSR pollutant'' at 40 CFR 52.21(b)(50).[8] EPA has concluded that this change will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA, and is approving this revision to the Georgia SIP.

## IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Georgia Rule 391–3–1–.02(7)—''Prevention of Significant Deterioration'' at subparagraph (a)(1), effective October 14, 2014,[9] which revises PSD rules, and Rule 391–3–1–.03(8)—''Permit Requirements'' at paragraph (g), effective September 13, 2011,[10] which revises NNSR rules, and at paragraph (d), effective August 1, 2013, which revises generally applicable permitting requirements. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[11] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Final Action

EPA is approving the aforementioned changes to the SIP because they are consistent with the CFR and the CAA. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision

[8] As discussed in section I of this action, Georgia's December 15, 2011 and November 12, 2014 submittals included further revisions to Rule 391–3–1.02(7)(a)(2)(ix), but those revisions were withdrawn in a December 1, 2016 letter.

[9] See footnote 8, above, for additional detail.

[10] As discussed in section I of this action, EPA is not incorporating by reference the changes to Rule 391–3–1–.03(8)(g)(1)(iii), (g)(2)(i), (g)(5)(i), and (g)(6)(i) that reference subparagraph 8(c)16.(ii).

[11] 62 FR 27968 (May 22, 1997).

should adverse comments be filed. This rule will be effective October 16, 2017 without further notice unless the Agency receives adverse comments by September 14, 2017.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 16, 2017 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: July 19, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

## Subpart L—Georgia

■ 2. Section 52.570(c) is amended by revising the entries for ''391–3–1–.02(7)'' and ''391–3–1–.03'' to read as follows:

### § 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * * | * | * * | * * |
| 391–3–1–.02(7) ..... | Prevention of Significant Deterioration of Air Quality (PSD). | 10/14/2014 | 8/15/2017, [Insert citation of publication]. | EPA is not incorporating the revision to Georgia Rule 391–3–1–.02(7)(a)(2)(iv) included in Georgia's November 12, 2014 SIP submittal because that provision is not in the SIP. As discussed in EPA's action published March 4, 2016 to update to Georgia's SIP. The version of Georgia Rule 391–3–1–.02(7) in the SIP does not incorporate by reference: (1) The provisions amended May 1, 2007 to exclude facilities that produce ethanol through a natural fermentation process from the definition of ''chemical process plants'' in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t), or (2) the provisions at 40 CFR 52.21(b)(2)(v) and (b)(3)(iii)(*c*) that were stayed indefinitely (March 30, 2011). |
| * | * * | * | * * | * * |
| 391–3–1–.03 ..... | Permits ..... | 8/1/2013 | 8/15/2017, [Insert citation of publication]. | Changes specifically to (8)—Permit Requirements at (d) (state effective August 1, 2013) and (g) (state effective September 13, 2011). |
| * | * * | * | * * | * * |

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[FR Doc. 2017–16490 Filed 8–14–17; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 160920866–7167–02]**

**RIN 0648–XF573**

## Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish in the West Yakutat District of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting retention of sablefish by vessels using trawl gear in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary because the 2017 total allowable catch of sablefish allocated to vessels using trawl gear in the West Yakutat District of the GOA will be reached.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), August 9, 2017, through 2400 hours, A.l.t., December 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2017 total allowable catch (TAC) of sablefish allocated to vessels using trawl gear in the West Yakutat District of the GOA is 211 metric tons (mt) as established by the final 2017 and 2018 harvest specifications for groundfish of the GOA (82 FR 12032, February 27, 2017).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2017 TAC of sablefish allocated to vessels using trawl gear in the West Yakutat District of the GOA will be reached. Therefore, NMFS is requiring that sablefish caught by vessels using trawl gear in the West Yakutat District of the GOA be treated as prohibited species in accordance with § 679.21(b).

### Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of sablefish by vessels using trawl gear in the West Yakutat District of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 8, 2017.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 9, 2017.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–17137 Filed 8–9–17; 4:15 pm]

BILLING CODE 3510–22–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 160920866–7167–02]**

**RIN 0648–XF572**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2017 total allowable catch of Pacific ocean perch in the West Yakutat District of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), August 9, 2017, through 2400 hours, A.l.t., December 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Warpinski, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2017 total allowable catch (TAC) of Pacific ocean perch in the West Yakutat District of the GOA is 2,786 metric tons (mt) as established by the final 2017 and 2018 harvest specifications for groundfish of the (82 FR 12032, February 27, 2017).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2017 TAC of Pacific ocean perch in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,686 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific ocean perch in the West Yakutat District of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 8, 2017.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 9, 2017.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–17133 Filed 8–9–17; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 82, No. 156
Tuesday, August 15, 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.

## DEPARTMENT OF ENERGY

### Energy Efficiency and Renewable Energy Office

### 10 CFR Part 430

**[EERE–2017–BT–NOA–0052]**

## Energy Conservation Program: General Service Incandescent Lamps and Other Incandescent Lamps Request for Data

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

**ACTION:** Notification of data availability (NODA); request for information (RFI).

**SUMMARY:** The U.S. Department of Energy (DOE) seeks annual domestic sales and shipment data for general service incandescent lamps (GSILs) and other incandescent lamps. DOE intends to use this sales data from stakeholders to inform its decision on whether to amend standards for GSILs.

**DATES:** DOE will accept comments, data, and information regarding this NODA received no later than October 16, 2017.

**ADDRESSES:** Interested persons are encouraged to submit comments, data and information using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–NOA–0052, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: GSIL2017NOA0052@ee.doe.gov.* Include the docket number in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the NODA, see section IV, Submission of Comments.

*Docket:* The docket, which includes **Federal Register** notices, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket Web page can be found at *http://www.regulations.gov.* The docket Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section IV for information on how to submit comments through *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:**

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

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IV. Submission of Comments

## I. Background

Amendments to the Energy Policy and Conservation Act of 1975 (EPCA),[1] Public Law 94–163 (42 U.S.C. 6291–6317, as codified), in the Energy Independence and Security Act of 2007 (EISA 2007) direct DOE to conduct two rulemaking cycles to evaluate energy conservation standards for general service lamps (GSLs). (42 U.S.C. 6295(i)(6)(A)–(B)) GSLs are defined in EPCA to include GSILs, compact fluorescent lamps (CFLs), general service light-emitting diode (LED) and organic light-emitting diode (OLED) lamps, and any other lamps that the Secretary of Energy (Secretary) determines are used to satisfy lighting applications traditionally served by general service incandescent lamps.

For the first rulemaking cycle, Congress instructed DOE to initiate a rulemaking process prior to January 1, 2014, to consider two questions: (1) Whether to amend energy conservation standards for general service lamps and (2) whether ''the exemptions for certain incandescent lamps should be maintained or discontinued.'' (42 U.S.C. 6295(i)(6)(A)(i)) Further, if the Secretary determines that the standards in effect for GSILs should be amended, EPCA provides that a final rule must be published by January 1, 2017, with a compliance date at least 3 years after the date on which the final rule is published. (42 U.S.C. 6295(i)(6)(A)(iii)) In developing such a rule, DOE must consider a minimum efficacy standard of 45 lumens per watt (lm/W). (42 U.S.C. 6295(i)(6)(A)(ii)) If DOE fails to complete a rulemaking in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv) or a final rule from the first rulemaking cycle does not produce savings greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, the statute provides a ''backstop'' under which DOE must prohibit sales of GSLs that do not meet a minimum 45 lm/W standard beginning on January 1, 2020. (42 U.S.C. 6295(i)(6)(A)(v))

[1] All references to EPCA refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (April 30, 2015).

DOE initiated the rulemaking process in a timely manner by publishing in the **Federal Register** a notice of availability of a framework document. 78 FR 73737 (Dec. 9, 2013); *see also* 79 FR 73503 (Dec. 11, 2014) (notice of availability of preliminary analysis). DOE later issued a notice of proposed rulemaking (NOPR) to propose amended energy conservation standards for GSLs. 81 FR 14528, 14629–14630 (Mar. 17, 2016). The March 2016 NOPR focused on the first question that Congress directed DOE to consider—whether to amend energy conservation standards for general service lamps. (42 U.S.C. 6295(i)(6)(A)(i)(I)) In the March 2016 NOPR proposing energy conservation standards for GSLs, DOE stated that it would be unable to undertake any analysis regarding GSILs and other incandescent lamps because of a then applicable congressional restriction (the Appropriations Rider [2]) on the use of appropriated funds to implement or enforce 10 CFR 430.32(x). 81 FR 14528, 14540–14541. Notably, the applicability of this Appropriations Rider has not been extended in the current appropriations statute, and thus is no longer in effect.[3] As a result, DOE is no longer prevented from undertaking analysis and decision making required by the first question presented by Congress, *i.e.,* whether to amend energy conservation standards for general service lamps, including GSILs.

In response to comments to the March 2016 NOPR, DOE conducted additional research and published a notice of proposed definition and data availability (NOPDDA), which proposed to amend the definitions of GSIL and GSL. 81 FR 71794, 71815 (Oct. 18, 2016). DOE explained that the October 2016 NOPDDA related to the second question that Congress directed DOE to consider—whether ''the exemptions for certain incandescent lamps should be maintained or discontinued.'' (42 U.S.C. 6295(i)(6)(A)(i)(II)); *see also* 81 FR 71798. The relevant ''exemptions,'' DOE explained, referred to the 22 categories of incandescent lamps that are statutorily excluded from the definitions of GSIL and GSL. 81 FR 71798.

On January 19, 2017, DOE published the two final rules concerning the definition of GSL. 82 FR 7276; 82 FR 7322. The January 2017 definition final rules amended the definitions of GSIL and GSL by bringing some of the statutorily-excluded categories of lamps within the definitions of GSIL and GSL. Like the October 2016 NOPDDA, the January 2017 definition final rules related to the second question that Congress directed DOE to consider, regarding whether to maintain or discontinue certain ''exemptions.'' (42 U.S.C. 6295(i)(6)(A)(i)(II))

The January 2017 definition final rules did not make a determination regarding ''whether [DOE] should impose or amend standards for any category of lamps, such as GSILs or GSLs.'' 82 FR 7277. Thus, by its own statement, DOE has not yet made a determination on whether standards applicable to GSILs should be amended, as required by statute. (42 U.S.C. 6295(i)(6)(A)(i)(I))

## II. Data

DOE has gathered preliminary data for GSILs and other incandescent lamps—both incandescent lamps specifically exempt from the currently effective definition of GSIL and incandescent lamps not included in the GSIL definition. The following paragraphs describe the data sources and methods used to estimate annual sales for these products.

General service incandescent lamp means a standard incandescent or halogen type lamp that is intended for general service applications; has a medium screw base; has a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and is capable of being operated at a voltage range at least partially within 110 and 130 volts. 10 CFR 430.2. As mentioned above, as a result of the previously effective Appropriations Rider, DOE was unable to undertake any analysis regarding GSILs when considering amended energy conservation standards for general service lamps. Therefore the January 2017 definition final rules, March 2016 NOPR, and previous rulemaking documents for general service lamps did not contain shipment data for GSILs. In reviewing existing data sources, the 2010 U.S. Lighting Market Characterization [4] (LMC) report estimated an installed stock of 2.1 billion general service A-type incandescent and general service halogen lamps in 2010. DOE has used estimates of shipments of traditional and halogen incandescent A-type lamps to the U.S. market in 2010, developed by the Cadeo Group [5], and the corresponding lamp shipments indices published periodically by NEMA [6] to generate an estimate for the sales of GSILs from 2011 to 2015 (shown in Table II.1).

TABLE II.1—ESTIMATE OF ANNUAL SALES OF GSILS

| Incandescent lamp category | Estimated annual sales | | | | |
|---|---|---|---|---|---|
| | 2011 | 2012 | 2013 | 2014 | 2015 |
| GSILs * | 737,000,000 | 634,000,000 | 626,000,000 | 499,000,000 | 441,000,000 |

* Estimated annual sales of GSILs are based on the NEMA lamp indices [6] and estimates of shipments of traditional and halogen incandescent A-line lamps in 2010, developed by the Cadeo Group.[5]

The currently effective GSIL definition does not include 22 specific incandescent lamp categories. In the October 2016 NOPDDA, DOE presented estimates for the annual shipments of each incandescent lamp type exempt from the definition of GSIL. 81 FR 71794, 71799 (October 18, 2016). DOE asked for and received comments on these numbers and provided revised estimates in the January 2017 definition final rules. 82 FR 7276, 7291 (January

[2] Section 312 of the Consolidated and Further Continuing Appropriations Act, 2016 (Pub. L. 114–113, 129 Stat. 2419) prohibits expenditure of funds appropriated by that law to implement or enforce: (1) 10 CFR 430.32(x), which includes maximum wattage and minimum rated lifetime requirements for GSILs; and (2) standards set forth in section 325(i)(1)(B) of EPCA (42 U.S.C. 6295(i)(1)(B)), which sets minimum lamp efficiency ratings for incandescent reflector lamps.

[3] See, the Consolidated Appropriations Act of 2017 (Pub. L. 115–31, div. D, tit. III).

[4] Navigant Consulting, Inc. *Final Report: 2010 U.S. Lighting Market Characterization.* 2012. U.S. Department of Energy. (Last accessed July 31, 2017.) *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/2010-lmc-final-jan-2012.pdf.*

[5] Carmichael, R. *GSL Shipments and Lumen Bin Distribution Data.* Cadeo Group. Contract 7094760–T2D: Washington, DC

[6] National Electrical Manufacturers Association. *Lamp Indices. (*Last accessed August 1, 2017.) *http://www.nema.org/Intelligence/Pages/Lamp-Indices.aspx.*

19, 2017) and 82 FR 7322, 7327 (January 19, 2017). In their comment on the October 2016 NOPDDA, the National Electrical Manufacturers Association (NEMA) noted that it collected data from certain of its members that manufacture specialty incandescent lamps and provided historical data for those products when possible. NEMA stated that sales and shipments of specialty incandescent lamps are declining, as indicated by the data provided and the confirmation of the trend by its members. (NEMA, No. 93 at pp. 9–10) [7] Shipments estimates for reflector lamps exempt from the currently effective definition of GSIL have been updated based on the stock of traditional and halogen incandescent reflector lamps in the 2010 LMC report [4], estimates of the average service lifetime for such lamps, and projections of solid state lighting (SSL) adoption from DOE's SSL program [8], as detailed in the Lawrence Berkeley National Laboratory (LBNL) report ''*Impact of the EISA 2007 Energy Efficiency Standard on General Service Lamps*'' [9] (LBNL GSL report). Table II.2 summarizes the annual and historical sales estimates for incandescent lamps exempt from the currently effective definition of GSIL.

TABLE II.2—ESTIMATE OF ANNUAL SALES OF INCANDESCENT LAMPS EXEMPT FROM THE CURRENTLY EFFECTIVE DEFINITION OF GSIL

| GSIL exempted lamp category | Estimated annual sales | | | | |
|---|---|---|---|---|---|
| | 2011 | 2012 | 2013 | 2014 | 2015 |
| Appliance Lamp | N/A | N/A | N/A | N/A | ~2,000,000 |
| Black Light Lamp | N/A | N/A | N/A | N/A | <1,000,000 |
| Bug Lamp | N/A | N/A | N/A | N/A | <1,000,000 |
| Colored Lamp | N/A | N/A | N/A | N/A | <2,000,000 |
| Infrared Lamp | N/A | N/A | N/A | N/A | <1,000,000 |
| Left-Hand Thread Lamp | N/A | N/A | N/A | N/A | <1,000,000 |
| Marine Lamp | N/A | N/A | N/A | N/A | <1,000,000 |
| Marine Signal Service Lamp | N/A | N/A | N/A | N/A | <1,000,000 |
| Mine Service Lamp | N/A | N/A | N/A | N/A | <1,000,000 |
| Plant Light Lamp | N/A | N/A | N/A | N/A | <1,000,000 |
| Reflector Lamp * | 308,000,000 | 312,000,000 | 315,000,000 | 319,000,000 | 316,000,000 |
| Rough Service Lamp ** | 6,829,000 | 6,045,000 | 6,237,000 | 7,267,000 | 10,914,000 |
| Shatter-Resistant Lamp ** | 1,210,000 | 1,455,000 | 1,093,000 | 1,042,000 | 689,000 |
| Sign Service Lamp | N/A | N/A | N/A | N/A | ~1,000,000 |
| Silver Bowl Lamp | N/A | N/A | N/A | N/A | ~1,000,000 |
| Showcase Lamp | N/A | N/A | N/A | N/A | <1,000,000 |
| 3-way Incandescent Lamp ** | 31,619,000 | 28,854,000 | 34,773,000 | 35,340,000 | 32,665,000 |
| Traffic Signal Lamp *** | N/A | 496,686 | 408,764 | 277,020 | 168,178 |
| Vibration Service Lamp ** | 914,000 | 1,077,000 | 1,407,000 | 5,220,000 | 7,071,000 |
| G shape Lamp with diameter of 5 inches or more *** | N/A | 1,361,735 | 1,010,423 | 938,600 | 859,867 |
| T shape lamp of 40 W or less or length of 10 inches or more *** | N/A | 11,168,553 | 11,507,467 | 10,529,062 | 9,750,395 |
| B, BA, CA, F, G16–1/2, G25, G30, S, M–14 lamp of 40 W or less *** | N/A | 104,288,216 | 98,240,738 | 78,742,710 | 71,702,637 |

* These shipments were estimated based on stock estimates from the 2010 LMC report,[4] lamp lifetime estimates, and projections from DOE's SSL program,[8] as detailed in the LBNL GSL report.[9]

** EPCA directs DOE to collect unit sales data for calendar years 2010 through 2025, in consultation with NEMA, for rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps. (42 U.S.C. 6295(l)(4)(C)) This data is available at *http://www.regulations.gov/docket?D=EERE-2011-BT-NOA-0013.*

*** These shipments were provided by NEMA in a comment on the October 2016 NOPDDA. (NEMA, No. 93 at pp. 17–19, 30).

In addition to GSILs and incandescent lamps specifically exempt from the definition of GSIL, there are several other categories of incandescent lamps. The definition of GSIL includes only lamps with medium screw bases, within a specific lumen range, and that can be operated at a voltage at least partially within 110 and 130 volts—leaving many other incandescent lamp categories unaddressed (*e.g.,* incandescent lamps with lumen outputs greater than the 2,600 lumen upper limit specified in the GSIL definition; incandescent lamps with other base types, such as candelabra bases; and incandescent lamps that operate at other voltages, such as 12 volts).

DOE has data for certain incandescent lamps that do not meet the parameters of the GSIL definition. In consultation with NEMA, DOE has collected annual sales data for certain higher lumen lamps (>2,600 lumen to 3,300 lumen lamps). However, for the remaining incandescent lamp categories, again due to the previously applicable Appropriations Rider, the January 2017 definition final rules, March 2016 NOPR, and previous rulemaking documents for general service lamps did not contain shipment data. In reviewing existing data sources, DOE has estimated shipments for small-screw-base lamps (*i.e.,* lamps with a screw base smaller than medium, such as candelabra base, intermediate base or mini-candelabra base lamps) and for multifaceted reflector (MR) lamps that

[7] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop energy conservation standards for GSLs (Docket No. EERE–2013–BT–STD–0051), which is maintained at *http://www.regulations.gov.* This notation indicates that the statement preceding the reference was made by NEMA, is from document number 93 in the docket, and appears at pages 9–10 of that document.

[8] Navigant Consulting, Inc. *Energy Savings Forecast of Solid-State Lighting in General Illumination Applications.* 2014. U.S. Department of Energy. (Last accessed August 2, 2017.) *https://energy.gov/eere/ssl/downloads/energy-savings-forecast-solid-state-lighting-general-illumination-applications.*

[9] Kantner, C.L.S., A.L. Alstone, M. Ganeshalingam, B.F. Gerke, and R. Hosbach. *Impact of the EISA 2007 Energy Efficiency Standard on General Service Lamps.* 2017. Lawrence Berkeley National Laboratory: Berkeley, CA. Report No. LBNL–1007090 REV. (Last accessed August 2, 2017.) *https://eta.lbl.gov/sites/default/files/publications/lbnl-1007090-rev.pdf.*

typically have a bi-pin or twist and lock base. DOE has estimated shipments of these lamps from 2011 to 2015 (shown in Table II.3) based on regional socket surveys, lamp lifetime estimates, and projections from DOE's SSL program,[8] as detailed in the LBNL GSL report.[9]

TABLE II.3—ESTIMATE OF ANNUAL SALES OF OTHER INCANDESCENT LAMPS

| Incandescent lamp category | Estimated annual sales | | | | |
|---|---|---|---|---|---|
| | 2011 | 2012 | 2013 | 2014 | 2015 |
| Higher Lumen Incandescent Lamps (>2,600–3,300 lumens) * | 9,878,000 | 12,273,000 | 9,296,000 | 5,232,000 | 4,049,000 |
| Small-Screw-Base Lamps (*e.g.,* candelabra base lamps) ** | 201,000,000 | 203,000,000 | 205,000,000 | 208,000,000 | 209,000,000 |
| MR lamps ** | 48,700,000 | 49,300,000 | 49,800,000 | 50,400,000 | 49,700,000 |

* EPCA directs DOE to collect unit sales data for calendar years 2010 through 2025, in consultation with NEMA, for rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps. (42 U.S.C. 6295(l)(4)(C)) This data is available at *http://www.regulations.gov/docket?D=EERE-2011-BT-NOA-0013.*

** These shipments were estimated based on regional socket surveys, lamp lifetime estimates, and projections from DOE's SSL program,[8] as detailed in the LBNL GSL report.[9]

DOE requests comment on the estimates contained in this notice as well as relevant lamp sales and market data to assist in its determination of whether standards in effect for GSILs and/or other incandescent lamps should be amended. In particular, the data in Table II.3 represents lamp categories that contain lamps with many different features. For example, the small-screw-base lamp category includes lamps with candelabra bases, intermediate bases, and other different base types. These lamps also have a variety of bulb shapes, such as candle, bullet, flame, etc. Further, some lamp categories may not be specifically listed in the tables above, such as pin base, non-reflector halogen lamps. To better understand the diversity of products in the incandescent lamp market, DOE requests information regarding the breakdown of sales by base type, bulb shape, lumen output, and voltage for all incandescent lamps.

DOE also requests information regarding the energy use and end-user cost of incandescent lamps. Specifically, DOE seeks information regarding the percent of each lamp category (based on the breakdown by base type, bulb shape, lumen output, and voltage mentioned in the previous paragraph) that utilizes standard technology versus more efficient halogen technology. DOE requests the average wattage, efficacy, lifetime, and operating hours in each lamp category for the standard technology product and more efficient version, if one is offered. In a comment on the December 2014 preliminary analysis for general service lamps, NEMA indicated that lamps using incandescent/halogen technology have low initial cost. (NEMA, No. 34 at pp. 12–13) DOE requests information on the distribution channels for incandescent lamps and particularly on whether first cost varies among incandescent lamp categories or between a standard technology and halogen technology product.

DOE also requests information on future shipments and market trends. As shown in the previous tables, while sales for certain lamp categories are increasing or staying relatively flat, sales for other categories have decreased. DOE requests information regarding factors influencing these trends and whether they are expected to continue in the future. In particular, for categories for which sales are decreasing, DOE requests information regarding what products consumers are purchasing as replacements. As DOE believes the demand for light is not significantly decreasing, DOE expects a decrease in sales for incandescent/halogen products to represent a shift in purchases to products using fluorescent and/or LED technology. DOE also request data and information on consumer lamp purchasing decisions and how these decisions have changed over time when certain products have become less available or more costly. DOE seeks comment on the potential for lamp switching and whether more efficacious substitutes exists for all GSILs and other incandescent lamps. Finally, DOE is aware that all incandescent lamps may not be used in general lighting applications. DOE seeks information on whether specific categories of incandescent lamps have features that constrain their use to unique applications and whether more efficient products can be adequate replacements in those applications.

Now that the Appropriations Rider has been removed, DOE will collect and use this information to analyze standards for GSILs, and undertake its responsibility to determine if standards in effect for GSILs should be amended. Further, because DOE had previously been prohibited from collecting data with respect to GSILs, any data received in response to this NODA could result in a reassessment of the assumptions and determinations made in the January 2017 definition final rules.

## III. Conclusion

The purpose of this NODA is to collect data for GSILs and other incandescent lamps in order to assist DOE in making a determination regarding whether standards for GSILs should be amended.

## IV. Submission of Comments

DOE invites all interested parties to submit in writing by October 16, 2017, comments, data, and information on all aspects of this NODA.

Submitting comments via regulations.gov. The *http://www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing

comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Issued in Washington, DC, on August 8, 2017.

**Steven Chalk,**

*Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2017–17212 Filed 8–14–17; 8:45 am]

**BILLING CODE 6450–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Docket No. SBA–2017–0005]**

**13 CFR Chapter I**

## Reducing Unnecessary Regulatory Burden

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Request for information.

**SUMMARY:** The Small Business Administration (SBA or Agency) is seeking input from the public on identifying which of the Agency's regulations should be repealed, replaced or modified because they are obsolete, unnecessary, ineffective, or burdensome. This process of evaluating and identifying such regulations comports with the mandate in various Executive Orders to reduce the number and costs of the regulations that federal agencies impose on the public.

**DATES:** Comments are requested on or before October 16, 2017.

**ADDRESSES:** You may submit comments, identified by Docket Number SBA–2017–0005, using any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Identify comments by ''Docket Number SBA–2017–0005, Reducing Regulatory Burden RFI,'' and follow the instructions for submitting comments.

*Mail:* Holly Turner, Regulatory Reform Officer, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Holly Turner, 409 Third Street SW., Washington, DC 20416. Highlight the information that you consider to be CBI, and explain why you believe this information should be held confidential. SBA will review the information and make the final determination as to whether to publish the information.

**FOR FURTHER INFORMATION CONTACT:** Holly Turner, (202) 205–6335, 409 Third Street SW., Washington, DC 20416; email address: *IGA@sba.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. General Information

The SBA's mission is to maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses, and by assisting in economic recovery of communities after disasters. In carrying out this mission,

SBA has developed a regulatory policy that is implemented primarily through several core program offices: Office of Capital Access, Office of Disaster Assistance, Office of Entrepreneurial Development, Office of Government Contracting and Business Development, Office of International Trade, and Office of Investment and Innovation. SBA's regulations are codified at title 13 Code of Federal Regulations, chapter I, and consist of parts 100 through 147.

Federal agencies have an ongoing responsibility to ensure that the regulations they issue do not have an adverse economic impact on those affected by the rules. This responsibility has been reinforced over the years in various executive orders that have expressly directed agencies to review their regulations with an eye towards reducing the time and money the public must spend to comply with the regulatory requirements. The most recent of these executive orders are discussed below; together, they provide the framework for SBA's efforts to reduce the regulatory burden on the participants in the agency's programs. One of SBA's primary objectives in carrying out these efforts is to continue to promote economic growth, innovation, and job creation in the small business sector, and to ensure that disaster survivors have the clear policy and procedural guidance they need to quickly obtain financial assistance to rebuild their lives. Anyone responding to SBA's request for feedback should keep these objectives in mind.

**B. Executive Order 13771**

On January 30, 2017, President Trump signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended to ensure that an agency's regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless prohibited by law, this Executive Order requires the agency to (i) identify at least two existing regulations that the agency can cancel; and (ii) use the cost savings from the cancelled regulations to offset the cost of the new regulation.

**C. Executive Order 13777**

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things: eliminate jobs or inhibit job creation; are outdated, unnecessary or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified.

**D. Executive Order 13563**

Under Executive Order 13563, Improving Regulation and Regulatory Review (January 11, 2011), agencies conduct a retrospective review of their regulations to seek more affordable, less intrusive means to achieve policy goals, and to give careful consideration to the benefits and costs of their regulations. Executive Order 13563, similar to the requirements in Executive Order 13771 and Executive Order 13777, also requires agencies to review existing rules to remove outdated regulations that stifle job creation and make the U.S. economy less competitive.

**E. Request for Information**

In order to fully implement the goal of these executive orders, SBA seeks help from the public in identifying those regulations that affected parties believe impose unnecessary burdens or costs that exceed their benefits, eliminate jobs or inhibit job creation, or are ineffective or outdated. Commenters should also address how SBA can best obtain and consider accurate, objective data about the costs and other burdens associated with the agency's existing regulations. As you comment, SBA requests that you keep in mind the agency's mission to strengthen America's economy by providing tools to help start and grow businesses, create jobs, and help disaster survivors recover.

**F. List of Questions for Commenters**

The list of questions below is meant to assist in the formulation of public comments and is not intended to restrict the issues that may be addressed. SBA requests that commenters identify the specific regulation at issue and explain, in as much detail as possible, why the regulation should be streamlined, expanded, or repealed, including estimated cost savings and benefits to small businesses and other stakeholders.

(1) Are there SBA regulations that have become unnecessary or ineffective and, if so, what are they?

(2) Are there SBA regulations that can be repealed without impairing SBA's regulatory programs and, if so, what are they?

(3) Are there SBA regulations that have become outdated and, if so, how can they be modernized to better accomplish their regulatory objectives?

(4) Are there SBA regulations that are still necessary, but which have not operated as well as expected such that a modified approach is justified, and what is that approach?

(5) Are there SBA regulations or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives more efficiently?

(6) Are there any technological developments that can be leveraged to modify, streamline, or repeal any existing SBA regulatory requirements?

(7) Are there any SBA regulations that are not tailored to impose the least burden on the public?

(8) How can SBA best obtain and consider accurate, objective data about the costs, burdens, and benefits of existing SBA regulations?

(9) Are there any specific suggestions of ways SBA can better achieve its regulatory objectives?

SBA notes that this RFI is issued solely for information and planning purposes and that the Agency is not required to implement any of the suggestions it receives. In addition, although the Agency will not be able to respond to individual comments, the requested feedback is valued and will be given careful consideration.

**Authority:** 15 U.S.C. 634(b)(6); E.O. 13771; E.O. 13777.

Dated: August 4, 2017.

**Linda E. McMahon,**

*Administrator.*

[FR Doc. 2017–17176 Filed 8–14–17; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2017–0716; Product Identifier 2016–NM–165–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2016–02–

01, which applies to certain Airbus Model A320–211, –212, and –231 airplanes. AD 2016–02–01 requires repetitive inspections to detect cracks of the pressurized floor fittings at a certain frame, and renewal of the zone protective finish or replacement of fittings with new fittings if necessary. AD 2016–02–01 also provides an optional modification that is terminating action for the repetitive inspections. Since we issued AD 2016–02–01, the manufacturer conducted an additional fatigue analysis of cracking of the pressurized floor fittings and determined that the optional modification should be a required action. This proposed AD would retain the requirements of AD 2016–02–01, and would require accomplishment of the modification. This proposed AD is intended to complete certain mandated programs intended to support the airplane reaching its limit of validity (LOV) of the engineering data that support the established structural maintenance program. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 29, 2017.

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

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

For service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0716; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0716; Product Identifier 2016–NM–165–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

As described in FAA Advisory Circular 120–104 (*http://www.faa.gov/documentLibrary/media/Advisory_Circular/120-104.pdf*), several programs have been developed to support initiatives that will ensure the continued airworthiness of aging airplane structure. The last element of those initiatives is the requirement to establish a LOV of the engineering data that support the structural maintenance program under 14 CFR 26.21. This proposed AD is the result of an assessment of the previously established programs by the design approval holder (DAH) during the process of establishing the LOV for the affected airplanes. The actions specified in this proposed AD are necessary to complete certain programs to ensure the continued airworthiness of aging airplane structure and to support an airplane reaching its LOV.

On January 9, 2016, we issued AD 2016–02–01, Amendment 39–18380 (81 FR 4878, January 28, 2016) (''AD 2016–02–01''), for certain Airbus Model A320–211, –212, and –231 airplanes. AD 2016–02–01 was prompted by an extended service goal analysis by the manufacturer, which revealed that the compliance times and repetitive inspection intervals to detect and correct fatigue cracking in the pressurized floor fittings at frame (FR) 36 should be reduced to meet the original design service goal. AD 2016–02–01 requires repetitive visual inspections to detect cracks of the pressurized floor fittings at FR 36, and renewal of the zone protective finish or replacement of fittings with new fittings if necessary. AD 2016–02–01 also provides an optional terminating action for the repetitive inspections. We issued AD 2016–02–01 to detect and correct fatigue cracking in the pressurized floor fittings at FR 36, which could result in failure of a floor fitting and subsequent depressurization of the fuselage.

Since we issued AD 2016–02–01, the manufacturer conducted an additional fatigue analysis to extend the service goal of the airplane and to meet the limit of validity requirements of the widespread fatigue damage (WFD) regulations. Also, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0181, dated September 13, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A320–211, –212, and –231 airplanes. The MCAI states:

> During centre fuselage certification full scale fatigue testing, damage was found on the pressurized floor fittings at Frame (FR) 36, below the lower surface panel. This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> To prevent such damage, Airbus developed modification 21282, which was introduced in production from MSN [manufacturer serial number] 0105, to reinforce the pressurized floor fitting lower surface by changing material. For affected in-service aeroplanes, Airbus issued Service Bulletin (SB) A320–57–1028, introducing repetitive inspections, and SB A320–57–1029, which provides modification instructions.
>
> DGAC [Direction Générale de l'Aviation Civile] France issued AD 95–099–067 to require these repetitive inspections and, depending on findings, corrective action(s), while the modification was specified in that [French] AD as optional terminating action for these inspections.
>
> Following new analysis in the frame of Extended Service Goal exercise, the

inspection thresholds and intervals were revised to meet the original Design Service Goal. Consequently, EASA issued AD 2013–0226 [which corresponds to FAA AD 2016–02–01 (81 FR 4878, January 28, 2016)] to retain the requirements of DGAC France AD 95–099–067, which was superseded, but required those actions within reduced compliance times.

Since that [EASA] AD was issued, in the frame of Widespread Fatigue Damages analysis, the situation has been reassessed and it has been decided to reclassify the modification, still stated as 'optional' terminating action in EASA AD 2013–0226, to the status 'mandatory'.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2013–0226, which is superseded, but requires embodiment of the modification as specified in Airbus SB A320–57–1029.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0716.

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

Airbus has issued Service Bulletin A320–57–1028, Revision 02, dated June 3, 2013. The service information describes procedures for an inspection to detect cracks of the pressurized floor fittings at FR 36, renewal of the zone protective finish, and replacement of fittings with new fittings.

Airbus has also issued Service Bulletin A320–57–1029, Revision 02, dated June 16, 1999. The service information describes procedures for modification of the pressurized floor fittings at FR 36.

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

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Costs of Compliance**

We estimate that this proposed AD affects 13 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection | 11 work-hours × $85 per hour = $935 per inspection cycle. | $0 | $935 per inspection cycle. | $12,155 per inspection cycle. |
| Modification | 85 work-hours × $85 per hour = $7,225 | 5,320 | 12,545 | 163,085. |

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2016–02–01, Amendment 39–18380 (81 FR 4878, January 28, 2016), and adding the following new AD:

**Airbus:** Docket No. FAA–2017–0716; Product Identifier 2016–NM–165–AD.

**(a) Comments Due Date**

We must receive comments by September 29, 2017.

**(b) Affected ADs**

This AD replaces AD 2016–02–01, Amendment 39–18380 (81 FR 4878, January 28, 2016) (''AD 2016–02–01'').

**(c) Applicability**

This AD applies to Airbus Model A320–211, –212, –214, and –231 airplanes, certificated in any category, manufacturer serial numbers up through 0104 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code 57, Wings.

**(e) Reason**

This proposed AD is intended to complete certain mandated programs intended to support the airplane reaching its limit of validity (LOV) of the engineering data that support the established structural maintenance program. We are proposing this AD to prevent fatigue cracking in the pressurized floor fittings at frame 36, which could result in the reduced structural integrity of the floor fittings and subsequent depressurization of the fuselage.

**(f) Compliance**

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

**(g) Inspection**

(1) At the latest of the times specified in paragraphs (g)(1)(i), (g)(1)(ii), and (g)(1)(iii) of this AD: Do a detailed inspection of the pressurized floor fittings at FR 36, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1028, Revision 02, dated June 3, 2013. Repeat the inspection thereafter at intervals not to exceed 9,300 flight cycles or 18,600 flight hours, whichever occurs first.

(i) Before exceeding 20,900 flight cycles or 41,800 flight hours, whichever occurs first since first flight of the airplane.

(ii) Within 9,300 flight cycles or 18,600 flight cycles since the most recent inspection accomplished in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1028, Revision 02, dated June 3, 2013.

(iii) Within 1,250 flight cycles or 2,500 flight hours after March 3, 2016 (the effective date of AD 2016–02–01), without exceeding 12,000 flight cycles since the most recent inspection accomplished in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1028, Revision 02, dated June 3, 2013.

(2) If any crack is found during any inspection required by paragraph (g)(1) of this AD: Before further flight, repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

**(h) Modification**

Before exceeding 48,000 total flight cycles or 96,000 total flight hours, whichever occurs first since first flight of the airplane: Modify (replace aluminum fittings with titanium fittings) the pressurized floor fittings at FR 36, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1029, Revision 02, dated June 16, 1999. Accomplishment of this modification is terminating action for the repetitive inspections required by paragraph (g) of this AD for the modified airplane only.

**(i) Credit for Previous Actions**

(1) This paragraph provides credit for the inspection required by paragraph (g) of this AD, if that inspection was performed before the effective date of this AD using Airbus Service Bulletin A320–57–1028, dated August 12, 1991; or Revision 01, dated June 3, 2013.

(2) This paragraph provides credit for the modification required by paragraph (h) of this AD, if that modification was performed before the effective date of this AD using Airbus Service Bulletin A320–57–1029, dated August 12, 1991; or Revision 01, dated November 10, 1992.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

*(1) Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

*(2) Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the EASA; or Airbus's DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0181, dated September 13, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0716.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 28, 2017.

**John P. Piccola, Jr.,**

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

[FR Doc. 2017–16569 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0777; Product Identifier 2017–NM–050–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems) Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Saab AB, Saab Aeronautics Model SAAB 340B airplanes. This proposed AD was prompted by reports of natural stall events in icing conditions, without prior stall warnings. This proposed AD would require modifying the stall warning system, installing new stall warning computers, and activating the stall warning system. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 29, 2017.

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

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

For service information identified in this NPRM, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email

*saab340techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.* You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0777; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1112; fax: 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0777; Product Identifier 2017–NM–050–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2017–0067, dated April 24, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Saab AB, Saab Aeronautics Model SAAB 340B airplanes. The MCAI states:

A few natural stall events, specifically when operating in icing conditions, have been experienced on SAAB 340 series aeroplanes, without receiving a prior stall warning.

This condition, if not corrected, could result in loss of control of the aeroplane.

To address this potential unsafe condition, SAAB developed a modified stall warning system, incorporating improved stall warning logic, and issued various Service Bulletins (SB) providing instructions to replace the Stall Warning Computer (SWC) with a new SWC, and instructions to activate the new SWC. The new system includes stall warning curves optimized for operation in icing conditions, which are activated by selection of Engine Anti-Ice.

Consequently, EASA issued AD 2014–0218 [which corresponds to FAA AD 2016–22–15, Amendment 39–18704 (81 FR 76843, November 4, 2016)] to require installation and activation of the improved SWC. That [EASA] AD excluded certain SAAB 340B aeroplanes by s/n.

Since EASA AD 2014–0218 was issued, SAAB developed a technical solution applicable for some of those previously excluded aeroplanes, and issued SB 340–27–117 and SB 340–27–118, providing instructions to modify and activate the new SWC.

For the reasons described above, this [EASA] AD requires installation and activation of the improved SWC.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0777.

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

Saab AB, Saab Aeronautics has issued Service Bulletin 340–27–117, dated January 23, 2017. The service information describes procedures for modifying the stall warning system.

Saab AB, Saab Aeronautics has also issued Service Bulletin 340–27–118, dated January 23, 2017. The service information describes procedures for installing new stall warning computers and activating the modified stall warning system.

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

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Costs of Compliance**

We estimate that this proposed AD affects 4 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Modification, installation, and activation ..... | 78 work-hours × $85 per hour = $6,630 ..... | $33,000 | $39,630 | $158,520 |

**Authority for This Rulemaking**

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems):** Docket No. FAA–2017–0777; Product Identifier 2017–NM–050–AD.

**(a) Comments Due Date**

We must receive comments by September 29, 2017.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aerosystems) Model SAAB 340B airplanes, certificated in any category, serial numbers 362, 363, 385, and 405.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by reports of natural stall events in icing conditions, without prior stall warnings. We are issuing this AD to prevent a natural stall event in icing conditions without any stall warning, which could result in loss of control of the airplane.

**(f) Compliance**

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

**(g) Modification**

Within 12 months after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Install a provision for a modified stall warning system, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–117, dated January 23, 2017.

(2) Install new stall warning computers and activate the modified stall warning system, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–118, dated January 23, 2017.

**(h) Parts Installation Prohibition**

After modification of an airplane as required by paragraph (g) of this AD, no person may install a stall warning computer having part number (P/N) 20AK5 or P/N 0020AK5 on that airplane.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

**(j) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2017–0067, dated April 24, 2017, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0777.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1112; fax: 425–227–1149.

(3) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab340.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.* You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 3, 2017.

**Jeffrey E. Duven,**

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

[FR Doc. 2017–17095 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0776; Product Identifier 2017–NM–062–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–200, –300, –400, and –500 series airplanes. This proposed AD was prompted by reports of cracks in the frame web adjacent to the air-conditioning support brackets. This proposed AD would require an inspection for any air conditioning bracket assembly or intercostal, and depending on the results, repetitive inspections for cracking of certain locations and applicable on-condition actions. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 29, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0776.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0776; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Alan Pohl, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0776; Product Identifier 2017–NM–062–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

**Discussion**

We have received reports indicating that operators have found cracks in the frame web adjacent to the air-conditioning support brackets. One crack was found in the outboard fastener hole common to the stringer tie for stringer S–8R at station (STA) 380 with a crack size 0.35 inch, at 35,889 total flight cycles. Another crack was found in the outboard fastener hole common to the stringer tie for stringer S–8L at STA 907 with a crack size 0.20 inch, at 28,165 total flight cycles. The frame web cracks are due to fatigue caused by the stringer tie reacting to frame twisting that is the result of the air-conditioning bracket binding within the slip joint assembly. This binding results in out-of-plane (forward-aft) loads being placed onto the frame and occurs because of thermal expansion of the air conditioning rail as well as fuselage deflection during flight transmitting loads into the rail. Such cracks, if not corrected, could result in a severed frame. A severed frame, in combination with potential multiple site damage (MSD) at the stringer S–10 lap splice or chem-mill skin cracks, can result in possible rapid decompression and loss of structural integrity of the airplane.

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

We reviewed Boeing Alert Service Bulletin 737–53A1363, dated April 7, 2017. The service information describes procedures for an inspection for any air-conditioning bracket assembly or intercostal, repetitive inspections for cracking of certain locations, and applicable on-condition actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1363, dated April 7, 2017, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0776.

**Costs of Compliance**

We estimate that this proposed AD affects 302 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspections | 27 work-hours × $85 per hour = $2,295 per inspection cycle. | $0 | $2,295 per inspection cycle. | $693,090 per inspection cycle. |

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The Boeing Company:** Docket No. FAA–2017–0776; Product Identifier 2017–NM–062–AD.

**(a) Comments Due Date**

We must receive comments by September 29, 2017.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 737–200, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1363, dated April 7, 2017.

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by reports of cracks in the frame web adjacent to the air-conditioning support brackets. We are issuing this AD to detect and correct cracks in the frame web adjacent to the air-conditioning support brackets, which could result in a severed frame, and in combination with potential multiple site damage (MSD) at the stringer S–10 lap splice or chem-mill skin cracks, could result in possible rapid decompression and loss of structural integrity of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

Except as required by paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1363, dated April 7, 2017, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1363, dated April 7, 2017.

**(h) Exceptions to Service Information Specifications**

(1) Where Boeing Alert Service Bulletin 737–53A1363, dated April 7, 2017, uses the phrase ''after the original issue date of this service bulletin,'' for purposes of determining compliance with the requirements of this AD, the phrase ''after the effective date of this AD'' applies.

(2) Where Boeing Alert Service Bulletin 737–53A1363, dated April 7, 2017, specifies contacting Boeing, and specifies that action as RC: This AD requires using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

**(i) Terminating Action for Repetitive Inspections**

Accomplishment of a reinforcement repair at the stringer tie location in accordance with a method approved in accordance with the procedures specified in paragraph (j) of this AD terminates the repetitive inspections required by paragraph (g) of this AD for the repaired stringer tie location only, provided the crack is removed or trimmed out from the stringer tie holes.

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

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h)(2) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance

or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(k) Related Information**

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 2, 2017.

**Jeffrey E. Duven,**

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

[FR Doc. 2017–16780 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0775; Product Identifier 2017–NM–048–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc., Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2016–25–18, for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. AD 2016–25–18 requires an inspection for discrepancies of the attachment points of the links between the engine rear mount assemblies, and corrective actions if necessary. Since we issued AD 2016–25–18, we have determined that replacement of certain nuts and bolts in the engine rear mount assemblies is necessary. This proposed AD would require an inspection of certain attachment points, corrective action if necessary, and replacement of certain bolts and nuts in the engine rear mount assemblies. This proposed AD also adds airplanes to the applicability. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 29, 2017.

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

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

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0775; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Aziz Ahmed, Airframe Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7329; fax: 516–794–5531.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0775; Product Identifier 2017–NM–048–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

On December 2, 2016, we issued AD 2016–25–18, Amendment 39–18744 (81 FR 90961, December 16, 2016) (''AD 2016–25–18''), for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. AD 2016–25–18 was prompted by a report indicating that during maintenance, an engine mount pin was found backed out of the rear mount link, and the associated retaining bolt was also found fractured. AD 2016–25–18 requires an inspection for discrepancies of the attachment points of the links between the engine rear mount assemblies, and corrective actions if necessary. We issued AD 2016–25–18 to detect and correct broken engine attachment hardware, which could result in separation of an engine from the airplane.

Since we issued AD 2016–25–18, we have determined that replacement of certain nuts and bolts in the engine rear mount assemblies is necessary.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2016–23R1, dated February 20, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

> Bombardier reported that during maintenance of a BD–700 aeroplane, the engine mount pin, part number (P/N) BRR15838, was found backed out of the rear mount link. The retaining bolt, P/N AS54020, which passes through the engine mount pin was also found fractured at the groove which holds the locking spring. An investigation revealed the most probable root cause of failure to be a single axial tension static overload, with no evidence of fatigue contributing to the failure.
>
> The above condition if not detected, may result in the loss of engine attachment to the airframe.
>
> As an interim corrective action, Bombardier issued Service Bulletins (SBs) 700–71–002, 700–71–6002, 700–71–5002,

and 700–1A11–71–002 to inspect the attachment points of the links between the engine rear mount assemblies, and install replacement hardware if required.

The original version of this [Canadian] AD was issued to mandate incorporation of the above Bombardier SBs to inspect and maintain integrity of the affected engine rear mount assembly.

Revision 1 of this [Canadian] AD is issued to mandate incorporation of the Bombardier SBs 700–71–003, 700–71–6003, 700–71–5003, and 700–1A11–71–003 to replace the existing bolts and self-locking nuts with new bolts and nuts, as a final corrective action.

The MCAI also adds airplanes having serial numbers 9764, 9766, and 9771 through 9785 inclusive to the applicability. Those airplanes are also affected by the identified unsafe condition. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0775.

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

Bombardier has issued the following service information.

- Bombardier Service Bulletin 700–71–002, Revision 01, dated June 30, 2016.
- Bombardier Service Bulletin 700–71–5002, Revision 01, dated June 30, 2016.
- Bombardier Service Bulletin 700–71–6002, Revision 01, dated June 30, 2016.
- Bombardier Service Bulletin 700–1A11–71–002, Revision 01, dated June 30, 2016.

This service information describes procedures for an inspection for discrepancies of the attachment points of the links between the engine rear mount assemblies and corrective actions. These documents are distinct since they apply to different airplane models and serial numbers.

Bombardier has also issued the following service information. The service information describes procedures for nut and bolt replacement. These documents are distinct since they apply to different airplane models and serial numbers.

- Bombardier Service Bulletin 700–71–003, dated December 5, 2016.
- Bombardier Service Bulletin 700–71–5003, dated December 5, 2016.
- Bombardier Service Bulletin 700–71–6003, dated December 5, 2016.
- Bombardier Service Bulletin 700–1A11–71–003, dated December 5, 2016.

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

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Costs of Compliance**

We estimate that this proposed AD affects 97 airplanes of U.S. registry.

The actions required by AD 2016–25–18, and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2016–25–18 is $85 per product.

The retained on-condition costs in this proposed AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $730 per product. Based on these figures, the estimated cost of the on-condition actions that are required by AD 2016–25–18 is $900 per product.

We have received no definitive data that would enable us to provide cost estimates for other retained on-condition actions specified in AD 2016–25–18.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost up to $14,940 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be up to $1,482,160, or up to $15,280 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

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

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

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2016–25–18, Amendment 39–18744 (81 FR 90961, December 16, 2016), and adding the following new AD:

**Bombardier, Inc.:** Docket No. FAA–2017–0775; Product Identifier 2017–NM–048–AD.

**(a) Comments Due Date**

We must receive comments by September 29, 2017.

**(b) Affected ADs**

This AD replaces AD 2016–25–18, Amendment 39–18744 (81 FR 90961, December 16, 2016) (''AD 2016–25–18'').

**(c) Applicability**

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers (S/Ns) 9002 through 9785 inclusive, and 9998.

**(d) Subject**

Air Transport Association (ATA) of America Code 72, Engine.

**(e) Reason**

This AD was prompted by a report indicating that during maintenance, an engine mount pin was found backed out of the rear mount link, and the associated retaining bolt was also found fractured at the groove that holds the locking spring. We are issuing this AD to detect and correct broken engine attachment hardware, which could result in separation of an engine from the airplane.

**(f) Compliance**

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

**(g) Retained Inspection, With No Changes**

This paragraph restates the requirements of paragraph (g) of AD 2016–25–18, with no changes. For airplanes having S/Ns 9002 through 9763 inclusive, 9765, 9767 through 9770 inclusive, and 9998: Within 500 flight hours or 4 months, whichever occurs first after January 3, 2017 (the effective date of AD 2016–25–18), do an inspection for discrepancies of the engine rear mount assemblies (including missing or broken bolts, missing nuts, incorrect torque values, and an incorrect gap between the bushing and washer); in accordance with Part A of the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) through (g)(4) of this AD. Accomplishing the actions required by paragraphs (j) and (k) of this AD terminates the requirements of this paragraph.

(1) Bombardier Service Bulletin 700–71–002, Revision 01, dated June 30, 2016 (for Bombardier Model BD–700–1A10 airplanes).

(2) Bombardier Service Bulletin 700–71–6002, Revision 01, dated June 30, 2016 (for Bombardier Model BD–700–1A10 airplanes).

(3) Bombardier Service Bulletin 700–71–5002, Revision 01, dated June 30, 2016 (for Bombardier Model BD–700–1A11 airplanes).

(4) Bombardier Service Bulletin 700–1A11–71–002, Revision 01, dated June 30, 2016 (for Bombardier Model BD–700–1A11 airplanes).

**(h) Retained Corrective Action for Paragraph (g) of This AD, With No Changes**

This paragraph restates the requirements of paragraph (h) of AD 2016–25–18, with no changes. If any discrepancy is detected during the inspection required by paragraph (g) of this AD, before further flight, replace missing parts and correct noncompliant gaps and bolt torque, as specified in the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) through (g)(4) of this AD, except as required by paragraph (i) of this AD. Accomplishing the actions required by paragraphs (j) and (k) of this AD terminates the requirements of this paragraph.

**(i) Retained Exception to Service Information Specifications, With No Changes**

This paragraph restates the requirements of paragraph (i) of AD 2016–25–18, with no changes. Where the applicable Bombardier service bulletin specified in paragraphs (g)(1) through (g)(4) of this AD provides no instructions for corrective actions, or specifies to contact Bombardier for appropriate action, accomplish corrective actions in accordance with the procedures specified in paragraph (o)(2) of this AD.

**(j) New Requirement of This AD: Gap Measurement**

Within 1,000 flight hours or 12 months, whichever occurs first after the effective date of this AD: Measure the gaps between the applicable shouldered bushing fitted on the mount beam and the washer; and between the applicable engine ring lug and the head of the mount pin to determine if the gaps are within acceptable limits; in accordance with Part A of the Accomplishment Instructions of the applicable service information specified in paragraphs (j)(1) through (j)(4) of this AD. Accomplishing the actions required by paragraphs (j) and (k) of this AD terminates the requirements of paragraphs (g) and (h) of this AD.

(1) Bombardier Service Bulletin 700–71–003, dated December 5, 2016 (for Bombardier Model BD–700–1A10 airplanes).

(2) Bombardier Service Bulletin 700–71–6003, dated December 5, 2016 (for Bombardier Model BD–700–1A10 airplanes).

(3) Bombardier Service Bulletin 700–71–5003, dated December 5, 2016 (for Bombardier Model BD–700–1A11 airplanes).

(4) Bombardier Service Bulletin 700–1A11–71–003, dated December 5, 2016 (for Bombardier Model BD–700–1A11 airplanes).

**(k) New Requirement of This AD: Nut and Bolt Replacement, and Gap Measurement**

Within 1,000 flight hours or 12 months, whichever occurs first after the effective date of this AD: Replace the nuts having part number (P/N) AS54365 and the bolts having P/N AS54020 and AS54002 in the engine rear mount assembly with new nuts and new bolts; and do the gap measurement to determine if the gap is within acceptable limits; in accordance with Part B of the Accomplishment Instructions the applicable service information specified in paragraphs (j)(1) through (j)(4) of this AD.

**(l) New Requirement of This AD: Corrective Action**

If any gap is detected, during any measurement required by paragraph (j) or (k) of this AD, that is not within the applicable limits specified in the service information specified in paragraphs (j)(1) through (j)(4) of this AD, before further flight repair using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

**(m) No Reporting Required**

Although the service information identified in paragraphs (j)(1) through (j)(4) of this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(n) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before January 3, 2017 (the effective date of AD 2016–25–18), in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (n)(1) through (n)(4) of this AD.

(1) Bombardier Service Bulletin 700–71–002, dated May 31, 2016.

(2) Bombardier Service Bulletin 700–71–6002, dated May 31, 2016.

(3) Bombardier Service Bulletin 700–71–5002, dated May 31, 2016.

(4) Bombardier Service Bulletin 700–1A11–71–002, dated May 31, 2016.

**(o) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

**(p) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive 2016–23R1, dated February 20, 2017, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0775.

(2) For more information about this AD, contact Aziz Ahmed, Airframe Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7329; fax: 516–794–5531.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 2, 2017.

**Jeffrey E. Duven,**

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

[FR Doc. 2017–16777 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0771; Product Identifier 2016–NM–212–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2015–09–07, which applies to all The Boeing Company Model 787 airplanes. AD 2015–09–07 requires a repetitive maintenance task for electrical power deactivation. Since we issued AD 2015–09–07, Boeing has developed new software for the generator control unit (GCU) that addresses the software counter overflow anomaly that prompted the issuance of AD 2015–09–07. This proposed AD would require installing the new GCU software. This proposed AD would also remove certain airplanes from the applicability. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 29, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0771.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0771; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Stephen Oshiro, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6480; fax: 425–917–6590; email: *Stephen.Oshiro@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0771; Product Identifier 2016–NM–212–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

On April 23, 2015, we issued AD 2015–09–07, Amendment 39–18153 (80 FR 24789, May 1, 2015) (''AD 2015–09–07''), for all The Boeing Company Model 787 airplanes. AD 2015–09–07 requires a repetitive maintenance task for electrical power deactivation on Model 787 airplanes. AD 2015–09–07 resulted from the determination that a Model 787 airplane that has been powered continuously for 248 days can lose all alternating current (AC) electrical power due to the GCUs simultaneously going into failsafe mode. This condition is caused by a software counter internal to the GCUs that will overflow after 248 days of continuous power. We issued AD 2015–09–07 to prevent loss of all AC electrical power, which could result in loss of control of the airplane.

**Actions Since AD 2015–09–07 Was Issued**

The preamble to AD 2015–09–07 specifies that we consider the requirements ''interim action'' and that the manufacturer is developing a modification to address the unsafe condition. That AD explains that we might consider further rulemaking if a modification is developed, approved, and available. Since we issued AD 2015–09–07, Boeing has developed new software for the Model 787 GCU that addresses the software counter overflow anomaly that prompted the issuance of AD 2015–09–07. Installation of the new software eliminates the need for performing the repetitive maintenance

actions (*i.e.*, repetitive electrical power deactivations) that were mandated by AD 2015–09–07 as a means of mitigating the GCU software counter overflow anomaly.

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

We reviewed the following service information.

- Boeing Service Bulletin B787–81205–SB240063–00, Issue 002, dated June 7, 2016, which describes procedures for installing operational program software (OPS) into each of the six GCUs and doing a software check. This service information specifies to concurrently accomplish the following two service bulletins:
- Boeing Service Bulletin B787–81205–SB280018–00, Issue 001, dated April 17, 2014, which describes procedures for installing fuel quantity management program software and doing a software check.
- Boeing Service Bulletin B787–81205–SB420006–00, Issue 003, dated October 15, 2015, which describes procedures for installing common interface control document 9.3 software and doing a software check.
- Boeing Multi Operator Message MOM–MOM–15–0248–01B, dated April 19, 2015; and Boeing Multi Operator Message MOM–MOM–15–0248–01B(R1), dated April 20, 2015. This service information describes procedures for electrical power deactivation of Model 787 airplanes. These documents are distinct due to editorial revisions.

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

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would retain all requirements of AD 2015–09–07. However, this proposed AD removes certain airplanes from the applicability of AD 2015–09–07, which affects all Model 787 airplanes. The new software specified in Boeing Service Bulletin B787–81205–SB240063–00, Issue 002, dated June 7, 2016, has already been installed on airplanes having line numbers 4, 5, 10, 12–19, 22, 369, 371, 373, and 375–552 and will be installed in production on line numbers 553 and subsequent. Line numbers 1, 2, and 3 are no longer in service. Therefore, this proposed AD only affects airplanes identified in Boeing Service Bulletin B787–81205–SB240063–00, Issue 002, dated June 7, 2016.

This proposed AD would also require installing the new software and accomplishing applicable corrective actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0771.

The phrase ''corrective actions'' is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

**Differences Between This Proposed AD and the Service Information**

Boeing Service Bulletin B787–81205–SB240063–00, Issue 002, dated June 7, 2016, states that this revision has no effect on airplanes on which Issue 001 was previously done. However, this proposed AD will require additional action for Group 2 airplanes. Operators of Group 2 airplanes will be required to accomplish the actions in Boeing Service Bulletin B787–81205–SB420006–00, issue 003, dated October 15, 2015, on those airplanes.

**Costs of Compliance**

We estimate that this proposed AD affects 47 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Electrical power deactivation (actions retained from AD 2015–09–07). | 1 work-hour × $85 per hour = $85 per deactivation cycle. | $0 | $85 per deactivation cycle ..... | $3,995 per deactivation cycle. |
| Software installation (new proposed action). | 5 work-hours × $85 per hour = 425. | $0 | $425 ..... | $19,975. |

ESTIMATED COSTS FOR CONCURRENT ACTIONS

| Action | Labor cost | Parts cost | Cost on U.S. operators |
|---|---|---|---|
| Install fuel quantity management program software. | 1 work-hour × $85 per hour = $85 | [1] ..... | Up to $3,995. |
| Install common interface control document 9.3 software. | Up to 15 work-hours X $85 per hour = $1,275. | [1] ..... | Up to $59,925. |

[1] We have received no definitive data that would enable us to provide parts cost estimates for the concurrent actions specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

**Authority for This Rulemaking**

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

We are issuing this rulemaking under the authority described in Subtitle VII,

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–09–07, Amendment 39–18153 (80 FR 24789, May 1, 2015), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2017–0771; Product Identifier 2016–NM–212–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by September 29, 2017.

**(b) Affected ADs**

This AD replaces AD 2015–09–07, Amendment 39–18153 (80 FR 24789, May 1, 2015) (''AD 2015–09–07'').

**(c) Applicability**

This AD applies to The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category, as identified in Boeing Service Bulletin B787–81205–SB240063–00, Issue 002, dated June 7, 2016.

**(d) Subject**

Air Transport Association (ATA) of America Code 24, Electrical power.

**(e) Unsafe Condition**

This AD was prompted by the determination that a Model 787 airplane that has been powered continuously for 248 days can lose all alternating current (AC) electrical power due to the generator control units (GCUs) simultaneously going into failsafe mode. This condition is caused by a software counter internal to the GCUs that will overflow after 248 days of continuous power. We are issuing this AD to prevent loss of all AC electrical power, which could result in loss of control of the airplane.

**(f) Compliance**

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

**(g) Retained Repetitive Maintenance Task: Electrical Power Deactivation With a New Reference To Terminating Action**

This paragraph restates the actions required by paragraph (g) of AD 2015–09–07, with a new reference to terminating action. At the latest of the times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, accomplish electrical power deactivation on the airplane, in accordance with step 2) in ''DESIRED ACTION'' of Boeing Multi Operator Message MOM–MOM–15–0248–01B, dated April 19, 2015; or Boeing Multi Operator Message MOM–MOM–15–0248–01B(R1), dated April 20, 2015. The main and auxiliary power unit (APU) batteries do not need to be disconnected when performing the electrical power deactivation. Repeat the electrical power deactivation thereafter at intervals not to exceed 120 days until the software installation required by paragraph (h) of this AD is done.

(1) Within 120 days after the last electrical power deactivation in accordance with step 2) in ''DESIRED ACTION'' of Boeing Multi Operator Message MOM–MOM–15–0248–01B, dated April 19, 2015; or Boeing Multi Operator Message MOM–MOM–15–0248–01B(R1), dated April 20, 2015.

(2) Within 120 days after the date of issuance of the original certificate of airworthiness or the date of issuance of the original export certificate of airworthiness.

(3) Within 7 days after May 1, 2015 (the effective date of AD 2015–09–07).

**(h) New Requirement of This AD: Software Installation**

Within 12 months after the effective date of this AD: Install new operational program software (OPS) into each of the six GCUs, do a software check, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB240063–00, Issue 002, dated June 7, 2016. Do all applicable corrective actions before further flight. Accomplishment of the actions required by this paragraph on all six GCUs on an airplane terminates the requirements of paragraph (g) of this AD for that airplane.

**(i) New Requirement of This AD: Concurrent Actions**

(1) For Group 1 airplanes as identified in Boeing Service Bulletin B787–81205–SB240063–00, Issue 002, dated June 7, 2016: Prior to or concurrently with accomplishing the actions required by paragraph (h) of this AD, do the actions specified in paragraph (i)(1)(i) and (i)(1)(ii) of this AD.

(i) Install new fuel quantity management program software and do a software check, in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB280018–00, Issue 001, dated April 17, 2014. If any software check fails, before further flight, do corrective actions, repeat the check, and do applicable corrective actions until the software passes the check.

(ii) Install new common interface control document 9.3 software and do software checks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB420006–00, Issue 003, dated October 15, 2015. If any software check fails, before further flight, do corrective actions, repeat the check, and do applicable corrective actions until the software passes the check.

(2) For Group 2 airplanes as identified in Boeing Service Bulletin B787–81205–SB240063–00, Issue 002, dated June 7, 2016: Prior to or concurrently with accomplishing the actions required by paragraph (h) of this AD, install new common interface control document 9.3 software and do software checks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin B787–81205–SB420006–00, Issue 003, dated October 15, 2015. If any software check fails, before further flight, do corrective actions, repeat the check, and do applicable corrective actions until the software passes the check.

**(j) Credit for Previous Actions**

(1) For Group 1 and Group 3 airplanes as identified in Boeing Service Bulletin B787–81205–SB240063–00, Issue 001, dated December 22, 2015: This paragraph provides credit for the actions specified in paragraph

(h) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin B787–81205–SB240063–00, Issue 001, dated December 22, 2015.

(2) For Group 2 airplanes as identified in Boeing Service Bulletin B787–81205–SB240063–00, Issue 001, dated December 22, 2015: This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin B787–81205–SB240063–00, Issue 001, dated December 22, 2015, and provided the actions specified in Boeing Service Bulletin B787–81205–SB420006–00, Issue 003, dated October 15, 2015, are done within 12 months after the effective date of this AD.

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

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2015–09–07 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(5) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(5)(i) and (k)(5)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(l) Related Information**

(1) For more information about this AD, contact Stephen Oshiro, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6480; fax: 425–917–6590; email: *Stephen.Oshiro@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 28, 2017.

**John P. Piccola, Jr.,**

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

[FR Doc. 2017–16666 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0772; Product Identifier 2017–NM–075–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by reports of crack indications in the right wing upper aft skin, originating from fastener holes common to the rear spar upper chord. This proposed AD would require repetitive inspections for cracking of the wing upper aft skin, and applicable on-condition actions. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 29, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0772.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0772; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0772; Product Identifier 2017–NM–075–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider

all comments received by the closing date and may amend this NPRM because of those comments.

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

**Discussion**

We have received a report of crack indications in the right wing upper aft skin, originating from fastener holes common to the rear spar upper chord at wing buttock line (WBL) 172.30 and WBL 197.38. The cracks were found on airplanes with 58,148 to 64,204 total flight hours and 45,512 to 51,409 total flight cycles. This cracking, if not corrected, could result in the inability of a principal structural element to sustain flight load, which could adversely affect the structural integrity of the airplane.

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

We reviewed Boeing Alert Service Bulletin 737–57A1335, dated May 24, 2017. The service information describes procedures for repetitive inspections for cracking of the wing upper aft skin at and forward of the rear spar upper chord, and applicable on-condition actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1335, dated May 24, 2017, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0772.

**Explanation of Applicability**

Model 737 airplanes having line numbers 1 through 291 have a limit of validity (LOV) of 34,000 total flight cycles, and the actions proposed in this NPRM, as specified in Boeing Alert Service Bulletin 737–57A1335, dated May 24, 2017, would be required at a compliance time occurring after that LOV. Although operation of an airplane beyond its LOV is prohibited by 14 CFR 121.1115 and 129.115, this NPRM would include those airplanes in the applicability so that these airplanes are tracked in the event the LOV is extended in the future.

**Costs of Compliance**

We estimate that this proposed AD affects 160 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection | 4 work-hours × $85 per hour = $340 per inspection cycle. | $0 | $340 per inspection cycle. | $54,400 per inspection cycle. |

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The Boeing Company:** Docket No. FAA–2017–0772; Product Identifier 2017–NM–075–AD.

**(a) Comments Due Date**

We must receive comments by September 29, 2017.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 57, Wings.

**(e) Unsafe Condition**

This AD was prompted by reports of crack indications in the right wing upper aft skin, originating from fastener holes common to the rear spar upper chord. We are issuing this AD to detect and correct cracking of the wing upper aft skin, which can lead to the inability of a principal structural element to sustain flight load, and adversely affect the structural integrity of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

(1) For airplanes identified as Group 2 in Boeing Alert Service Bulletin 737–57A1335, dated May 24, 2017: Except as required by paragraph (h) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1335, dated May 24, 2017, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1335, dated May 24, 2017.

(2) For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–57A1335, dated May 24, 2017: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable corrective actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

**(h) Exceptions to Service Information Specifications**

(1) For purposes of determining compliance with the requirements of this AD, the phrase ''the effective date of this AD'' may be substituted for ''the original issue date of this service bulletin,'' as specified in Boeing Alert Service Bulletin 737–57A1335, dated May 24, 2017.

(2) Where Boeing Alert Service Bulletin 737–57A1335, dated May 24, 2017, specifies contacting Boeing, and specifies that action as RC: This AD requires using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

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

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h)(2) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(j) Related Information**

(1) For more information about this AD, contact Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 4, 2017.

**Jeffrey E. Duven,**

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

[FR Doc. 2017–17096 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0769; Product Identifier 2017–NM–054–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2015–19–12, which applies to certain The Boeing Company Model 767 airplanes. AD 2015–19–12 requires a general visual inspection of certain lap splices for missing fasteners, and all applicable related investigative and corrective actions. Since we issued AD 2015–19–12, we have determined that additional airplanes are affected by the unsafe condition. This proposed AD would retain the actions required by AD 2015–19–12 and revise the applicability by adding airplanes. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 29, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA

90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0769.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0769; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Wayne Lockett, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0769; Product Identifier 2017–NM–054–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

**Discussion**

On September 11, 2015, we issued AD 2015–19–12, Amendment 39–18274 (80 FR 58346, September 29, 2015) (''AD 2015–19–12''), for certain Model 767 airplanes. AD 2015–19–12 requires a general visual inspection of certain stringer 37 (S–37) lap splices for missing fasteners, and all applicable related investigative and corrective actions. AD 2015–19–12 resulted from reports that six fasteners might not have been installed in the left and right S–37 between Body Station (BS) 428 and 431 lap splices on certain airplanes. We issued AD 2015–19–12 to detect and correct missing fasteners, which could result in cracks in the fuselage skin that could adversely affect the structural integrity of the airplane.

**Actions Since AD 2015–19–12 Was Issued**

Since we issued AD 2015–19–12, we have determined that additional airplanes are affected by the unsafe conditions and must be added to the applicability of the AD.

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

We reviewed Boeing Alert Service Bulletin 767–53A0251, Revision 1, dated March 7, 2017. The service information describes procedures for a general visual inspection of certain S–37 lap splices for missing fasteners, and applicable on-condition actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would retain all requirements of AD 2015–19–12. This proposed AD does not explicitly restate the requirements of AD 2015–19–12, which specified accomplishment of Boeing Alert Service Bulletin 767–53A0251, dated August 7, 2013. Paragraph (g) of this proposed AD would retain those requirements, which are included in Boeing Alert Service Bulletin 767–53A0251, Revision 1, dated March 7, 2017, described previously. Paragraph (g) of this proposed AD would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0251, Revision 1, dated March 7, 2017, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD would add airplanes to the applicability. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0769.

**Costs of Compliance**

We estimate that this proposed AD affects 398 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection | 1 work-hour × $85 per hour = $85 | $0 | $85 | $33,830 |

We estimate the following costs to do any necessary inspections/installations that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these inspections/installations:

ESTIMATED COSTS FOR ON-CONDITION ACTIONS

| Action ** | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Detailed and high frequency eddy current inspections and fastener installation. | 13 work-hours × $85 per hour = $1,105 ..... | * | $1,105 |

* All required parts are supplied by the operator. This cost is minimal, and we have no way to determine what an operator would pay for these parts.

** We have received no definitive data that would enable us to provide cost estimates for the repairs specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–19–12, Amendment 39–18274 (80 FR 58346, September 29, 2015), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2017–0769; Product Identifier 2017–NM–054–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by September 29, 2017.

**(b) Affected ADs**

This AD replaces AD 2015–19–12, Amendment 39–18274 (80 FR 58346, September 29, 2015) (''AD 2015–19–12'').

**(c) Applicability**

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–53A0251, Revision 1, dated March 7, 2017.

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by reports indicating that certain fasteners were not installed in the stringer 37 (S–37L and S–37R) lap splice between body stations 428 and 431 on certain airplanes. We are issuing this AD to detect and correct missing fasteners, which could result in cracks in the fuselage skin that could adversely affect the structural integrity of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

Except as required by paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0251, Revision 1, dated March 7, 2017, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0251, Revision 1, dated March 7, 2017.

**(h) Exceptions to Service Information Specifications**

(1) Where Boeing Alert Service Bulletin 767–53A0251, Revision 1, dated March 7, 2017, specifies to contact Boeing for repair instructions: Before further flight, do the repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(2) Where Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0251, Revision 1, dated March 7, 2017, specifies a compliance time ''after the Revision 1 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

**(i) Credit for Previous Actions**

For Group 1 airplanes as defined in Boeing Alert Service Bulletin 767–53A0251, Revision 1, dated March 7, 2017: This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 767–53A0251, dated August 7, 2013.

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

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs

for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2015–19–12 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(5) Except as required by paragraph (h)(1) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(5)(i) and (j)(5)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(k) Related Information**

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 28, 2017.

**John P. Piccola, Jr.,**

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

[FR Doc. 2017–16578 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0774; Product Identifier 2017–NM–036–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2012–12–05, which applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. AD 2012–12–05 currently requires repetitive inspections for cracking under the stop fittings and intercostal flanges and for cracking of the intercostal web, attachment clips, stringer splice channels, frame, reinforcement angle, shear web, frame outer chord and inner chord; a one-time inspection to detect missing fasteners; repetitive inspections of the cargo barrier net fitting for cracking; repetitive inspections for cracking of the stringer S–15L aft intercostal; and repair or corrective action if necessary. Since we issued AD 2012–12–05, we have received reports of additional cracking in locations not covered by the inspections in that AD. For certain airplanes, this proposed AD would add new repetitive inspections of certain areas of the frame inner chord, and applicable on-condition actions. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 29, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0774.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0774; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Galib Abumeri, Aerospace Engineer, Airframe Section, FAA, Los Angeles Aircraft Certification Office (ACO) Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0774; Product Identifier 2017–NM–036–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://*

*www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On June 4, 2012, we issued AD 2012–12–05, Amendment 39–17084 (77 FR 36139, June 18, 2012) (''AD 2012–12–05''), for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. AD 2012–12–05 superseded AD 2004–09–09, Amendment 39–13598 (69 FR 23646, April 30, 2004); and AD 2009–16–14, Amendment 39–15987 (74 FR 38901, August 5, 2009). AD 2012–12–05 requires repetitive inspections for cracking under the stop fittings and intercostal flanges and for cracking of the intercostal web, attachment clips, stringer splice channels, frame, reinforcement angle, shear web, frame outer chord and inner chord; a one-time inspection to detect missing fasteners; repetitive inspections of the cargo barrier net fitting for cracking; repetitive inspections for cracking of the stringer S–15L aft intercostal; and repair or corrective action if necessary. AD 2012–12–05 resulted from reports of cracking of the station (STA) 348.2 frame above the two outboard fasteners attaching the frame inner chord and door stop fittings, and in the outboard chord at stringer S–16L. AD 2012–12–05 also resulted from reports of missing fasteners in the STA 348.2 frame inner chord. We issued AD 2012–12–05 to detect and correct fatigue cracking of the intercostals on the forward and aft sides of the forward entry door cutout, which could result in loss of the forward entry door and rapid decompression of the airplane.

**Actions Since AD 2012–12–05 Was Issued**

Since we issued AD 2012–12–05, we have received reports of additional cracking in the STA 351.2 frame inner chord at stringer S–17L, at the fastener hole location common to the frame inner chord, door sill, and shear web. The cracks were reported on Model 737–300 and –500 airplanes that had accumulated between 40,600 and 65,500 total flight cycles. The STA 351.2 frame inner chord at stringer S–17L is hidden under the shear web and the door sill; therefore, any cracking at this location cannot be visually detected.

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

We reviewed Boeing Alert Service Bulletin 737–53A1240, Revision 2, dated November 2, 2016. The service information describes procedures for, among other actions, repetitive inspections of the fastener holes in the STA 351.2 frame inner chord at stringer 17L, and applicable on-condition actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would retain all requirements of AD 2012–12–05. Although this proposed AD does not explicitly restate the actions in Boeing Alert Service Bulletin 737–53A1240, Revision 1, dated June 29, 2010, that are part of the requirements of AD 2012–12–05, this proposed AD would retain those requirements. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (p) of this proposed AD. Paragraph (p) of this proposed AD would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1240, Revision 2, dated November 2, 2016, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times for Boeing Alert Service Bulletin 737–53A1240, Revision 2, dated November 2, 2016, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0774.

**Costs of Compliance**

We estimate that this proposed AD affects 411 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspections for cracking under the stop fittings and intercostal flanges [retained actions from AD 2012–12–05] (411 airplanes). | 18 work-hours × $85 per hour = $1,530 per inspection cycle. | $0 | $1,530 per inspection cycle. | $628,830 per inspection cycle. |
| Inspection of areas forward of the aft entry door [retained actions from AD 2012–12–05] (411 airplanes). | 2 work-hours × $85 per hour = $170 per inspection cycle. | 0 | $170 per inspection cycle. | $69,870 per inspection cycle. |
| Inspection of areas aft of the forward entry door [retained actions from AD 2012–12–05] (411 airplanes). | 1 work-hour × $85 per hour = $85 per inspection cycle. | 0 | $85 per inspection cycle. | $34,935 per inspection cycle. |
| Inspection for missing fasteners [retained actions from AD 2012–12–05] (411 airplanes). | 1 work-hour × $85 per hour = $85 ..... | 476 | $561 ..... | $230,571. |
| Inspection of fastener holes (new proposed action) (160 airplanes). | 27 work-hours × $85 per hour = $2,295 per inspection cycle. | 0 | $2,295 per inspection cycle. | $367,200 per inspection cycle. |

We estimate the following costs to do any necessary repairs that would be required based on the results of the inspections. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Repair of cracking done in accordance with Boeing Alert Service Bulletin 737–53A1240. | 24 work-hours × $85 per hour = $2,040 | $11,856 | $13,896 |

We have received no definitive data that would enable us to provide cost estimates for the other on-condition corrective actions specified in this proposed AD.

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2012–12–05, Amendment 39–17084 (77 FR 36139, June 18, 2012), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2017–0774; Product Identifier 2017–NM–036–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by September 29, 2017.

**(b) Affected ADs**

This AD replaces AD 2012–12–05, Amendment 39–17084 (77 FR 36139, June 18, 2012) (''AD 2012–12–05'').

**(c) Applicability**

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

**(d) Subject**

(d) Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by reports of cracking of the station (STA) 348.2 frame above the two outboard fasteners attaching the frame inner chord and door stop fittings, and in the outboard chord at stringer S–16L; missing fasteners in the STA 348.2 frame inner chord; and additional cracking in locations not covered by the inspections in AD 2012–12–05. We are issuing this AD to detect and correct fatigue cracking of the intercostals on the forward and aft sides of the forward entry door cutout, which could result in loss of the forward entry door and rapid decompression of the airplane.

**(f) Compliance**

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

**(g) Retained Initial Compliance Time for Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes, With No Changes**

This paragraph restates the requirements of paragraph (i) of AD 2012–12–05, with no changes. For all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, as identified in Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007: Before the accumulation of 15,000 total flight cycles, or within 4,500 flight cycles after November 1, 2005 (the effective date of AD 2005–20–03, Amendment 39–14296 (70 FR 56361, September 27, 2005) (''AD 2005–20–03'')), whichever occurs later: Do the inspections required by paragraphs (i) and (j) of this AD.

**(h) Retained Initial Compliance Time for Model 737–200C Series Airplanes, With No Changes**

This paragraph restates the requirements of paragraph (j) of AD 2012–12–05, with no changes. For all Model 737–200C series airplanes, as identified in Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007: Before the accumulation of 15,000 total flight cycles, or within 4,500 flight cycles after September 9, 2009 (the effective date of AD 2009–16–14, Amendment 39–15987 (74 FR 38901, August 5, 2009) (''AD 2009–16–14'')), whichever occurs later, do the inspection required by paragraph (k) of this AD.

**(i) Retained Initial Inspection for Group 1 Configuration Airplanes, With No Changes**

This paragraph restates the requirements of paragraph (k) of AD 2012–12–05, with no changes. For Group 1 airplanes identified in Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007: Perform a detailed inspection for cracking of the intercostal web, attachment clips, and stringer splice channels; and a high frequency eddy current (HFEC) inspection for cracking of the stringer splice channels located forward and aft of the forward entry door; and do all applicable corrective actions before further flight; in accordance with Parts

1 and 2 of the Work Instructions of Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003, or Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007; or in accordance with Parts 1, 2, 4, and 5 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010. After September 9, 2009 (the effective date of AD 2009–16–14), and until July 23, 2012 (the effective date of AD 2012–12–05), Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007; or Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010; may be used to accomplish the actions required by this paragraph. As of July 23, 2012, only Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010, may be used to accomplish the actions required by this paragraph.

**(j) Retained Initial Inspection for Cargo Configuration Airplanes (Forward of the Forward Entry Door), With No Changes**

This paragraph restates the requirements of paragraph (l) of AD 2012–12–05, with no changes. For Group 2 cargo airplanes identified in Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007: Perform a detailed inspection for cracking of the intercostal webs and attachment clips located forward of the forward entry door, and do all applicable corrective actions before further flight, in accordance with Part 3 of the Work Instructions of Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003, or Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007; or in accordance with Part 3 of Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010. After September 9, 2009 (the effective date of AD 2009–16–14), and until July 23, 2012 (the effective date of AD 2012–12–05), Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007; or Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010; may be used to accomplish the actions required by this paragraph. As of July 23, 2012, only Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010, may be used to accomplish the actions required by this paragraph.

**(k) Retained Initial Inspection for Cargo Configuration Airplanes (Aft of the Forward Entry Door), With No Changes**

This paragraph restates the requirements of paragraph (m) of AD 2012–12–05, with no changes. For Group 2 cargo airplanes identified in Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007: Perform a detailed inspection for cracking of the intercostal webs and attachment clips located aft of the forward entry door, and do all applicable corrective actions before further flight, in accordance with Part 4 of the Work Instructions of Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007; or in accordance with Part 3 of Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010. As of July 23, 2012 (the effective date of AD 2012–12–05), only Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010, may be used to accomplish the actions required by this paragraph.

**(l) Retained Repetitive Inspections, With No Changes**

This paragraph restates the requirements of paragraph (n) of AD 2012–12–05, with no changes. Repeat the inspections required by paragraphs (i), (j), and (k) of this AD thereafter at intervals not to exceed 6,000 flight cycles after the previous inspection, or within 3,000 flight cycles after September 9, 2009, whichever occurs later.

**(m) Retained Exceptions to Boeing Special Attention Service Bulletin 737–53–1204, With No Changes**

This paragraph restates the requirements of paragraph (o) of AD 2012–12–05, with no changes. Do the actions required by paragraphs (g), (h), (i), (j), (k), and (l) of this AD by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003; Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007; or Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010; except as provided by paragraphs (m)(1) and (m)(2) of this AD. After September 9, 2009 (the effective date of AD 2009–16–14), and until July 23, 2012 (the effective date of AD 2012–12–05), Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007; or Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010; may be used to accomplish the actions required by this paragraph. As of July 23, 2012, only Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010, may be used to accomplish the actions required by this paragraph.

(1) Where Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003; Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007; or Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

(2) Where Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003; or Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007; specifies a compliance time relative to the date of a service bulletin, this AD requires compliance relative to September 9, 2009 (the effective date of AD 2009–16–14). Where Boeing Special Attention Service Bulletin 737–53–1204, dated June 19, 2003; or Boeing Alert Service Bulletin 737–53A1204, Revision 1, dated March 26, 2007; specifies a compliance time relative to the date of the initial release of a service bulletin, this AD requires compliance relative to November 1, 2005 (the effective date of AD 2005–20–03).

**(n) Retained Exceptions to Boeing Alert Service Bulletin 737–53A1204, With No Changes**

This paragraph restates exceptions to Boeing Alert Service Bulletin 737–53A1204 specified in paragraph (r) of AD 2012–12–05, with no changes.

(1) The access and restoration instructions identified in the Work Instructions of Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010, are not required by this AD. Operators may perform those actions in accordance with approved maintenance procedures.

(2) The use of Boeing Drawing 65–88700 is not allowed when accomplishing the actions required by this AD in accordance with the Work Instructions of Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010.

**(o) Retained Initial and Repetitive Inspections of the S–15L Aft Intercostal and Cargo Barrier Net Fitting for Model 737–200C Series Airplanes, With No Changes**

This paragraph restates the requirements of paragraph (s) of AD 2012–12–05, with no changes. For Group 2 airplanes identified in Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010: Before the accumulation of 15,000 total flight cycles, or within 4,500 flight cycles after July 23, 2012 (the effective date of AD 2012–12–05), whichever occurs later, do initial detailed and HFEC inspections for cracking of the S–15L aft intercostal between BS 348.2 and BS 360, and do a detailed inspection of the cargo barrier net fitting at the intercostal, in accordance with Figure 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1204, Revision 2, dated June 24, 2010. If any cracking is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (s) of this AD. Repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles.

**(p) Actions for Boeing Alert Service Bulletin 737–53A1240, Including New Repetitive Inspections of Certain Fastener Holes**

(1) For airplanes identified as Group 1 and Group 3 in Boeing Alert Service Bulletin 737–53A1240, Revision 2, dated November 2, 2016: Except as required by paragraph (q) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1240, Revision 2, dated November 2, 2016, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1240, Revision 2, dated November 2, 2016.

(2) For airplanes identified as Group 2 in Boeing Alert Service Bulletin 737–53A1240, Revision 2, dated November 2, 2016: Within 120 days after the effective date of this AD, do actions to correct the unsafe condition using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

**(q) Exceptions to Service Information Specifications**

(1) Where Boeing Alert Service Bulletin 737–53A1240, Revision 2, dated November 2, 2016, uses the phrase ''after the Revision 2 date of this service bulletin,'' for purposes of determining compliance with the

requirements of this AD, the phrase ''after the effective date of this AD'' must be used.

(2) Where Boeing Alert Service Bulletin 737–53A1240, Revision 2, dated November 2, 2016, specifies contacting Boeing, and specifies that action as RC: This AD requires using a method approved in accordance with the procedures specified in paragraph (s) of this AD.

**(r) Credit for Previous Actions**

This paragraph provides credit for the actions specified in paragraph (p) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 737–53A1240, Revision 1, dated June 29, 2010, provided the conditions specified in paragraphs (r)(1) and (r)(2) of this AD are met and except as provided by paragraph (r)(3) of this AD. Boeing Alert Service Bulletin 737–53A1240, Revision 1, dated June 29, 2010, was incorporated by reference in AD 2012–12–05.

(1) Note 1 of paragraph 3.A of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1240, Revision 1, dated June 29, 2010, was disregarded when accomplishing the actions.

(2) Boeing Drawing 65–88700 was not used when accomplishing the actions in accordance with the Work Instructions of Boeing Alert Service Bulletin 737–53A1240, Revision 1, dated June 29, 2010.

(3) The access and restoration instructions identified in the Work Instructions of Boeing Alert Service Bulletin 737–53A1240, Revision 1, dated June 29, 2010, are not required. Operators are allowed to perform those actions in accordance with approved maintenance procedures.

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

(1) The Manager, Los Angeles Aircraft Certification Office (ACO) Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (t)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (q)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (s)(4)(i) and (s)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(t) Related Information**

(1) For more information about this AD, contact Galib Abumeri, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO) Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 2, 2017.

**Jeffrey E. Duven,**

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

[FR Doc. 2017–16776 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0773; Product Identifier 2017–NM–067–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by reports of cracks found in the lower chord of the left wing rear spar. This proposed AD would require repetitive inspections for cracking of the lower chord of the rear spar and lower aft skin at wing buttock line (WBL) 157 and applicable on-condition actions. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 29, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0773.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0773; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles Aircraft Certification Office (ACO)

Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0773; Product Identifier 2017–NM–067–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

**Discussion**

We have received reports indicating that a crack was found in the horizontal flange of the lower chord of the left wing rear spar at WBL 157 during a non-destructive test (NDT) at 53,841 total flight cycles and 66,268 total flight hours. Similar cracks have been reported on other Boeing airplanes that have accumulated between 63,550 and 69,285 total flight cycles. Analysis has shown that main landing gear (MLG) loading and braking loads result in cyclic fatigue and local stresses on the structure. Concentrated loading due to the back-to-back design of the MLG fitting also contributes to the problem. This condition, if not corrected, could lead to the inability of the lower chord of the rear spar, a principal structural element, to sustain limit load, which could adversely affect the structural integrity of the airplane.

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

We reviewed Boeing Alert Service Bulletin 737–57A1333, dated May 12, 2017. The service information describes procedures for repetitive low frequency eddy current (LFEC) inspections for cracking of the lower chord of the rear spar and detailed inspections for cracking of the lower aft skin at WBL 157, applicable on-condition actions (*e.g.,* repair), and instructions for airplanes that have an existing repair in the inspection area. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1333, dated May 12, 2017, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0773.

**Explanation of Applicability**

Model 737 airplanes having line numbers 1 through 291 have a limit of validity (LOV) of 34,000 total flight cycles, and the actions proposed in this NPRM, as specified in Boeing Alert Service Bulletin 737–57A1333, dated May 12, 2017, would be required at a compliance time occurring after that LOV. Although operation of an airplane beyond its LOV is prohibited by 14 CFR 121.1115 and 129.115, this NPRM would include those airplanes in the applicability so that these airplanes are tracked in the event the LOV is extended in the future.

**Costs of Compliance**

We estimate that this proposed AD affects 190 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| LFEC and detailed inspections | 10 work-hours × $85 per hour = $850 per inspection cycle. | $0 | $850 per inspection cycle. | Up to $161,500 per inspection cycle. |

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

We have received no definitive data that would enable us to provide cost estimates for the instructions for airplanes that have an existing repair in the inspection area specified in this proposed AD.

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This

proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The Boeing Company:** Docket No. FAA–2017–0773; Product Identifier 2017–NM–067–AD.

**(a) Comments Due Date**

We must receive comments by September 29, 2017.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 57, Wings.

**(e) Unsafe Condition**

This AD was prompted by the report of a crack indication in the horizontal flange of the lower chord of the left wing rear spar at wing buttock line (WBL) 157 and multiple reports of similar crack findings on other airplanes. We are issuing this AD to detect and correct cracking of the lower chord of the rear spar and the lower aft skin at WBL 157. Undetected cracks could lead to the inability of the lower chord of the rear spar, a principal structural element, to sustain limit load, which could adversely affect the structural integrity of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

(1) For Group 2 airplanes identified in Boeing Alert Service Bulletin 737–57A1333, dated May 12, 2017: Except as required by paragraph (h) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1333, dated May 12, 2017, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1333, dated May 12, 2017.

(2) For Group 1 airplanes identified in Boeing Alert Service Bulletin 737–57A1333, dated May 12, 2017: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable corrective actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

**(h) Exceptions to Service Information Specifications**

(1) Where Boeing Alert Service Bulletin 737–57A1333, dated May 12, 2017, uses the phrase ''after the original issue date of this service bulletin,'' for purposes of determining compliance with the requirements of this AD, the phrase ''after the effective date of this AD'' must be used.

(2) Where Boeing Alert Service Bulletin 737–57A1333, dated May 12, 2017, specifies contacting Boeing, and specifies that action as RC: This AD requires using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

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

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h)(2) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(j) Related Information**

(1) For more information about this AD, contact Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 2, 2017.

**Jeffrey E. Duven,**

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

[FR Doc. 2017–16774 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 110

**[Docket Number USCG–2015–0549]**

**RIN 1625–AA01**

## Anchorage Grounds; Galveston Harbor, Bolivar Roads Channel, Galveston, Texas

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a new anchorage area, Anchorage Area Alpha (A) East in Bolivar Roads near Galveston, Texas. The establishment of this additional anchorage area would enhance navigational safety, support regional maritime security needs, and contribute to the free flow of commerce in the Houston-Galveston area. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before October 16, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG–2015–0549 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Commander (LCDR) Navin Griffin, Sector Houston-Galveston, U.S. Coast Guard; telephone (281) 464–4736, email *Navin.L.Griffin@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

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

## II. Background, Purpose, and Legal Basis

The legal basis and authorities for this notice of proposed rulemaking are found in 33 U.S.C. 471, 1221 through 1236; 33 CFR 1.05–1, Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorages.

After extensive discussion, including the observations of and comments from various members of the port community, the Coast Guard has determined that the establishment of Anchorage Area (A) East in the Bolivar Roads area is necessary to address port security, port congestion, and navigation safety concerns. The proposed anchorage area was once an area utilized for spoils from dredging and is equipped to safely receive deep draft vessels. This proposed anchorage is primarily intended as an overflow anchorage for vessels that are awaiting an exam or inspection. We are proposing to amend 33 CFR 110.197 to establish Anchorage Area (A) East in order to increase the safety of life and property on navigable waters, improve the safety of vessels operating, transiting, or anchored and moored in the vicinity, and provide for the overall safe and efficient flow of vessel traffic and commerce in the area.

The Coast Guard has ascertained the view of the Galveston, TX District and Division Engineer, Corps of Engineers, U.S. Army, about the specific provisions of this proposed rule.

## III. Discussion of Proposed Rule

The Coast Guard is proposing to establish a new anchorage area to be known as Anchorage Area Alpha (A) East. This anchorage area would be located in the Galveston Harbor and Bolivar Roads Channel, TX, just east and adjacent to established Anchorage Area (A) in 33 CFR 110.197(a)(1). The boundaries of Anchorage Area Alpha (A) East are presented in proposed § 110.197(a)(4) in the regulatory text at the end of this document. The anchorage area would be approximately 0.19 square miles.

Proposed Anchorage Area (A) East is intended for temporary use by vessels of all types. Vessels will be allowed to occupy the anchorage areas during a wide range of conditions and for a broad variety of purposes. For example, vessels would be allowed to anchor temporarily while taking on stores, transferring personnel, or engaging in bunkering operations. Vessels would also be allowed to use anchorage areas while awaiting weather and other conditions favorable to resuming their voyage. However, it is to be emphasized that this anchorage is primarily intended as an overflow anchorage for vessels that are awaiting an exam or inspection. Vessels would not be allowed to anchor so as to obstruct the passage of other vessels proceeding to and from anchorage spaces. Anchors would not be placed in the channel and no portion of the hull or rigging would be allowed to extend outside the limits of the anchorage area.

Whenever the maritime or commercial interests of the United States so require, the Captain of the Port Houston-Galveston or his designated representative may direct the movement of any vessel anchored or moored within the anchorage areas.

## IV. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the location and size of the proposed anchorage grounds, as well as historical automatic identification system (AIS) data. The impacts on routine navigation are expected to be minimal because the proposed anchorage area is located outside of the established navigation channel. When not occupied, vessels would be able to maneuver in, around, and through the anchorage. Operators on our end maneuvering their vessels around the limits of the proposed anchorage area would not be significantly impacted.

### *B. Impact on Small Entities*

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

The number of small entities impacted and the extent of the impact, if any, is expected to be minimal. The anchorage area is located in an area of Bolivar Roads that is not a popular or productive fishing location. Further, the location is in an area not routinely transited by vessels heading to, or returning from, known fishing grounds. Finally, the anchorage is located in an area that is not currently used by small entities, including small vessels, for anchoring due to the depth of water naturally present in the area.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a permanent anchorage area in Bolivar Roads near Galveston, Texas. Normally such actions are categorically excluded from further review under paragraph 34(f) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

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

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

## PART 110 ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 110.197, add new paragraph (a)(4) to read as follows:

**§ 110.197 Galveston Harbor, Bolivar Roads Channel, Texas.**

(a) * * *

(4) Anchorage Area (A) East. The waters bounded by a line connecting the following points:

| Latitude | Longitude |
|---|---|
| 29°21′5.87″ N ..... | 094°42′52.7″ W |
| 29°20′53.99″ N ..... | 094°42′7.13″ W |
| 29°20′45.31″ N ..... | 094°42′37.75″ W |
| 29°20′39.16″ N ..... | 094°42′7.81″ W |

and thence to the point of beginning. The coordinates are based on NAD 83.

* * * * *

**David R. Callahan,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 2017–17144 Filed 8–14–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 61

**RIN 2900–AP54**

### VA Homeless Providers Grant and Per Diem Program

*Correction*

In proposed rule document 2017–15338, appearing on pages 34457–34464 in the issue of Tuesday, July 25, 2017, make the following correction:

On page 34463, in the second column, in the twenty-third line from the top, ''118'' should read ''1/8''.

[FR Doc. C1–2017–15338 Filed 8–14–17; 8:45 am]

**BILLING CODE 1301–00–D**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2017–0078; FRL–9965–59–Region 4]**

### Air Plan Approval; Georgia: New Source Review and Permitting Updates

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve changes to the Georgia State Implementation Plan (SIP) to update new source review and miscellaneous permitting regulations. EPA is proposing to approve portions of SIP revisions submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division on December 15, 2011, July 25, 2014, and November 12, 2014. This action is being proposed pursuant to the Clean Air Act and its implementing regulations.

**DATES:** Written comments must be received on or before September 14, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0078 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Akers can be reached via telephone at (404) 562–9089 or via electronic mail at *akers.brad@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules Section of this **Federal Register**, EPA is approving portions of Georgia's December 15, 2011, July 25, 2014, and November 12, 2014 SIP revisions as a direct final rule without prior proposal because the Agency views these portions of these SIP revisions as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all adverse comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: July 19, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–16489 Filed 8–14–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2017–0045; FRL–9966–17–Region 4]**

### Air Plan Approval; South Carolina; Interstate Transport (Prongs 1 and 2) for the 2010 1-Hour $NO_2$ Standard

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the South Carolina State Implementation Plan (SIP), submitted by the South Carolina Department of Health and Environmental Control (DHEC), on December 7, 2016, addressing the Clean Air Act (CAA) interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide ($NO_2$) National Ambient Air Quality Standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an ''infrastructure SIP.'' Specifically, EPA is proposing to approve South Carolina's December 7, 2016, SIP submission addressing prongs 1 and 2 to ensure that air emissions in the State do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour $NO_2$ NAAQS in any other state.

**DATES:** Comments must be received on or before September 14, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0045 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Andres Febres of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Febres can be reached by telephone at (404) 562–8966 or via electronic mail at *febres-martinez.andres@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) and from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

Through this proposed action, EPA is proposing to approve South Carolina's December 7, 2016, SIP submission addressing prong 1 and prong 2 requirements for the 2010 1-hour $NO_2$ NAAQS. All other applicable infrastructure SIP requirements for South Carolina for the 2010 1-hour $NO_2$ NAAQS have been addressed in separate rulemakings. *See* 80 FR 14019 (March 18, 2015), 81 FR 56512 (August 22, 2016), and 81 FR 63704 (September 16, 2016). A brief background regarding the 2010 1-hour $NO_2$ NAAQS is provided below.

On January 22, 2010, EPA established a new 1-hour primary NAAQS for $NO_2$ at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010). This NAAQS is designed to protect against exposure to the entire group of nitrogen oxides ($NO_X$). $NO_2$ is the component of greatest concern and is used as the indicator for the larger group of $NO_X$. Emissions that lead to the formation of $NO_2$ generally also lead to the formation of other $NO_X$. Therefore, control measures that reduce $NO_2$ can generally be expected to reduce population exposures to all gaseous $NO_X$ which may have the co-benefit of reducing the formation of ozone and fine particles both of which pose significant public health threats.

States were required to submit infrastructure SIP submissions for the 2010 1-hour $NO_2$ NAAQS to EPA no later than January 22, 2013. For comprehensive information on 2010 1-hour $NO_2$ NAAQS, please refer to the **Federal Register** notice cited immediately above.

## II. What is EPA's approach to the review of infrastructure SIP submissions?

The requirement for states to make a SIP submission of this type arises out of section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''each such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of section 110(a)(1) and (2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of Title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of section 169A of the CAA, and nonattainment new source review permit program submissions to address the permit requirements of CAA, Title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; Section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of Title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of Title I of the CAA, which specifically address nonattainment SIP requirements.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within section 110(a)(1) and (2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[4] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[5]

Ambiguities within section 110(a)(1) and (2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[6]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires attainment plan SIP submissions required by part D to meet the ''applicable requirements'' of section 110(a)(2); thus, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the Prevention of Significant Deterioration (PSD) program required in part C of Title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[7] EPA most recently

[2] *See, e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the $NO_X$ SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[3] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[4] *See, e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' 78 FR 4337 (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[5] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[7] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[8] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of Section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in section 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including Greenhouse Gases. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the fine particulate matter ($PM_{2.5}$) NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and EPA's policies addressing such excess emissions;[10] (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). Thus, EPA believes that it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[11] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in section 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may

[8] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[9] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[10] Subsequent to issuing the 2013 Guidance, EPA's interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs has changed. See ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' 80 FR 33839 (June 12, 2015). As a result, EPA's 2013 Guidance (p. 21 & n.30) no longer represents the EPA's view concerning the validity of affirmative defense provisions, in light of the requirements of section 113 and section 304.

[11] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption or affirmative defense for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of section 110(a)(1) and (2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[12] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[13] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[14]

## III. What are the Prong 1 and Prong 2 requirements?

For each new NAAQS, section 110(a)(2)(D)(i)(I) of the CAA requires each state to submit a SIP revision that contains adequate provisions prohibiting emissions activity in the state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in any downwind state. EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or conjointly as the ''good neighbor'' provision of the CAA.

## IV. What is EPA's analysis of how South Carolina addressed Prongs 1 and 2?

In South Carolina's December 7, 2016, SIP revision, the State concluded that its SIP adequately addresses prongs 1 and 2 with respect to the 2010 1-hour $NO_2$ NAAQS. South Carolina provides the following reasons for its determination: (1) The SIP contains state regulations that directly or indirectly control $NO_X$ emissions; (2) all areas in the United States are designated as unclassifiable/attainment for the 2010 1-hour $NO_2$ NAAQS; (3) monitored 1-hour $NO_2$ design values in South Carolina and surrounding states (Georgia, North Carolina, and Florida) are below the 2010 standard; [15] and (4) point source emissions of $NO_X$ in the State have trended downward. EPA preliminarily agrees with the State's conclusion based on the rationale discussed below.

First, South Carolina identifies SIP-approved portions of the following State rules that directly or indirectly control $NO_X$ emissions: S.C. Regulation 61–62.5, Standard No. 5.2 (*Control of Oxides of Nitrogen ($NO_X$)*); Regulation 61–62.96 (*Nitrogen Oxides ($NO_X$) and Sulfur Dioxide ($SO_2$) Budget Trading Program General Provisions*); Regulation 61–62.5, Standard No. 7 (*Prevention of Significant Deterioration*); and Regulation 61–62.5, Standard No. 7.1 (*Nonattainment New Source Review (NSR)*). Regulation 61–62.5, Standard No. 5.2 requires $NO_X$ controls on certain new stationary sources and requires certain existing sources that replace their burners to replace them with low $NO_X$ burners or equivalent technology capable of achieving a 30 percent reduction from uncontrolled levels. Regulation 61–62.96 implemented the Clean Air Interstate Rule (CAIR) which created regional cap-and-trade programs to reduce $SO_2$ and $NO_X$ emissions in 27 eastern states, including South Carolina, that contributed to downwind nonattainment and maintenance of the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[16] Regulations 61–62.5, Standards No. 7 and 7.1 require any new major source or major modification to go through prevention of significant deterioration (PSD) or nonattainment new source review permitting, respectively.

Second, there are no designated nonattainment areas for the 2010 1-hour $NO_2$ NAAQS. On February 17, 2012 (77 FR 9532), EPA designated the entire country as ''unclassifiable/attainment'' for the 2010 1-hour $NO_2$ NAAQS, stating that ''available information does not indicate that the air quality in these areas exceeds the 2010 1-hour $NO_2$ NAAQS.''

[12] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. *See* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[13] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under section 110(k)(6) of the CAA to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[14] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[15] A design value is a statistic that describes the air quality status of a given area relative to the level of the National Ambient Air Quality Standards (NAAQS). The design value for the 1-hour $NO_2$ NAAQS is the 3-year average of annual 98th percentile daily maximum 1-hour values for a monitoring site.

[16] EPA replaced CAIR with the Cross-State Air Pollution Rule (CSAPR) which, following litigation, became effective on January 1, 2015. CSAPR requires 27 Eastern states to limit their statewide emissions of $SO_2$ and/or $NO_X$ in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: The 1997 ozone NAAQS, the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 2008 8-hour ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide budgets for emissions of annual $SO_2$, annual $NO_X$, and/or ozone-season $NO_X$ by each covered state's large EGUs. On May 26, 2017, South Carolina submitted a draft SIP revision for parallel processing that adopts provisions for participation in the CSAPR annual $NO_X$ and annual $SO_2$ trading programs. EPA signed a notice of proposed rulemaking on July 28, 2017, proposing to approve this SIP revision.

Third, the 2013–2015 $NO_2$ design values in South Carolina and surrounding states are well below the 100 ppb standard. The highest monitored design values during this time period are 56 to 65 percent below the NAAQS with Georgia and Florida recording the highest design values (48 and 44 ppb, respectively).[17]

Fourth, $NO_X$ point source emissions data provided in the SIP submittal show that $NO_X$ emissions decreased from 72,885 tons in 2008 to 41,070 tons in 2014, a reduction of approximately 44 percent.[18]

For all the reasons discussed above, EPA has preliminarily determined that South Carolina does not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour $NO_2$ NAAQS in any other state and that South Carolina's SIP includes adequate provisions to prevent emissions sources within the State from significantly contributing to nonattainment or interfering with maintenance of this standard in any other state.

## V. Proposed Action

As described above, EPA is proposing to approve South Carolina's December 7, 2016, SIP revision addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) for the 2010 1-hour $NO_2$ NAAQS.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule for the state of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the State of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 3, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–17223 Filed 8–14–17; 8:45 am]

**BILLING CODE 6560–50–P**

[17] This information is available in the SIP submittal and at *https://www.epa.gov/air-trends/air-quality-design-values*. Design values are computed and published annually by EPA's Office of Air Quality Planning and Standards and reviewed in conjunction with the EPA Regional Offices.

[18] The State reported these $NO_X$ emissions as $NO_2$ emissions in its SIP submittal.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2007–1092; FRL–9966–14–Region 5]**

### Air Plan Approval; Michigan Minor New Source Review

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve certain changes to the Michigan State Implementation Plan (SIP). This action relates to changes to the Permit to Install (PTI) requirements of the Michigan Rules submitted on November 12, 1993; May 16, 1996; April 3, 1998; September 2, 2003; March 24, 2009; and February 28, 2017.

**DATES:** Comments must be received on or before September 14, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1092 at *http://www.regulations.gov,* or via email to *damico.genvieve@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard,

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**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
II. Review of State Submittals
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

## I. Background

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires that the SIP include a program to provide for the ''regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved.'' This includes a program for permitting construction and modification of both major sources and minor sources that the State deems necessary to protect air quality. The State of Michigan's minor source PTI rules are contained in Part 2 of the Michigan Administrative Code. EPA last approved changes to the Part 2 rules in 1982. The Michigan Department of Environmental Quality (MDEQ) has submitted several Part 2 revision packages since that time; however, EPA has not taken a final action on any of the submittals. The following table provides a summary of the various state submittals with the most recent version of each section of the Michigan Rule highlighted in bold.

| Submittal | State effective date | Submittal date | Rules submitted 336.1xxx |
|---|---|---|---|
| 1 | 04/20/1989 | 11/12/1993 | 240, 241. |
| | 04/17/1992 | | 201, 283. |
| | 11/18/1993 | | 278, 279, 280, 281, 282, 284, 285, 286, 287, 288, 289, 290. |
| 2 | 07/26/1995 | 05/16/1996 | 201, 205, **208 (rescinded)**, **209**, 219, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290. |
| 3 | 12/12/1996 | 04/03/1998 | 201a, 205. |
| 4 | 06/13/1997 | 08/20/1998 | 278, 283, 284, 285, 286, 287, 290. |
| 5 | 07/01/2003 | 09/02/2003 | 201, **201a**, 202, **203**, **204**, 205, **206**, 207, **212**, **216**, 219, 240, 241, 278, 278a, **279 (rescinded)**, 281, 282, 284, 285, 287, 289, 299. |
| 6 | 06/20/2008 | 03/24/2009 | **201**, **202**, **205**, **207**, **219**, **240**, **241**, **278**, 281, 284, 285, 288, **299**. |
| 7 | 12/20/2016 | 2/21/2017 | **278a**, **280**, **281**, **282**, **283**, **284**, **285**, **286**, **287**, **288**, **289**, **290**. |

EPA published a proposed disapproval of the 1993, 1996, and 1998 submittals on November 9, 1999; however, EPA never published a final disapproval. The changes included in the 2003, 2009, and 2017 submittals were primarily intended to address disapproval issues identified by EPA in 1999. At the time of the 1999 proposed disapproval, the Part 2 Rules also included the state's major non-attainment PTI program. The major non-attainment provisions have been removed from Part 2, and are now covered by the Part 19 rules which were approved on December 16, 2013.

## II. Review of State Submittals

Section 110(a)(2)(C) of the CAA requires that each SIP include a program to provide for the regulation of construction and modification of stationary sources as necessary to assure that the National Ambient Air Quality Standards (NAAQS) are achieved. Specific elements for an approvable construction permitting plan are found in the implementing regulations at 40 CFR 51 subpart I—Review of New Sources and Modifications. Requirements relevant to minor construction programs are 40 CFR 51.160–51.163. EPA regulations have few specific criteria for state minor new source review (NSR) programs. Generally, state programs must set forth legally enforceable procedures that allow the state to determine if a planned construction activity would result in a violation of the state's SIP or a national standard and prevent any activity that would. In accordance with 40 CFR 51.162, the state plan must identify the responsible agency for making permitting decisions. 40 CFR 51.160 requires that the plan identify the types and sizes of activities that are subject to the plan, provide that sources undertaking an activity submit adequate information regarding the location, design and emissions related information to enable the state to make a determination, and discuss the air quality data and dispersion or other air quality modeling used. 40 CFR 51.161 provides specific criteria for public availability of information and opportunity for public comment. Finally, 40 CFR 51.164 requires that the plan identify the administrative procedures that will be followed in making permitting decisions.

The revisions to Part 2 submitted by MDEQ are largely provisions that strengthen the already approved minor NSR program adding greater detail with respect to applicability, required application material, and processing of applications; however, the revisions do include changes to waiver provisions and the addition of several categories of exemptions from the requirement to obtain a PTI. The revisions also include changes the public notice requirements, Michigan R 336.1205. EPA is not acting on Michigan R 336.1205 at this time, and it will be addressed in a subsequent rulemaking action.

The expansion of exemptions would be viewed as a potential relaxation of the already approved plan; therefore, Michigan was required to provide information as required by section 110(l) of the CAA to demonstrate that the revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. The 2003 and 2017 submittals provide analyses of the emissions associated with each new exemption and the impact they would have on air quality. EPA's review of the waiver and exemption provisions are discussed in greater detail below.

Michigan R 336.1202 provides a waiver from the requirement to obtain a permit prior to commencing construction under limited circumstances. The Prevention of Significant Deterioration (PSD) provisions of the CAA prohibit commencement of construction without first obtaining the required permit authorizing construction; however, the requirement only applies to major sources, and no such restriction is specified under the minor NSR program requirements set forth in 40 CFR 51.160. In addition, EPA has made determinations which further support that limited construction may begin before a permit is issued for minor sources. For example, EPA's October 10,

1978, memorandum from Edward E. Reich to Thomas W. Devine in Region 1 discusses limited preconstruction activities allowed at a site with both PSD and non-PSD sources. This memo states that construction may begin on PSD-exempt projects before the permit is issued. Furthermore, EPA approved a rule for Idaho's permit program and Wisconsin's permit program which allowed construction to commence under limited circumstance prior to a permit being issued. (See 68 FR 2217 and 73 FR 12893.) As stated previously, the minor NSR provisions at 40 CFR 51.160 require state programs to determine if activities would violate an applicable SIP or national standard and to prevent construction of an activity that would violate an applicable SIP provision or national standard. Michigan R 336.1202(1) requires an application for a waiver be submitted to MDEQ and requires MDEQ to act on the request within 30 days. Construction may not proceed unless the waiver is granted. The rule also indicates that the waiver does not guarantee approval of the required PTI and any construction activity would be at the owner/operator's risk. Michigan R 336.1202(2) limits the waiver to minor construction activities and activities that are not considered construction or reconstruction under a National Emission Standard for Hazardous Air Pollutants of 40 CFR part 61 or part 63. EPA finds the Michigan waiver provisions are consistent with EPA regulations and policy, are similar to waiver provisions previously approved in Idaho and Wisconsin, and provide adequate assurance that major construction activities would be prevented and activities will not result in a violation of the SIP or a national standard.

Generally, MDEQ requires a PTI for any activity that results in the emission of any amount of a regulated air pollutant. The state's minor NSR program does not exempt based on emission thresholds and instead lists specific exempt source categories of emissions. The exemption provisions considered in this action are Michigan R 336.1278, 336.1278a, and 336.1280–336.1290. When determining adequacy of the state rules, EPA is concerned with the possibility that an exemption might allow an activity that should be subject to major source permitting requirements escape appropriate review and permitting, that sources are required to maintain information adequate for the state to ensure that exemptions have been applied appropriately, and that the exemptions would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

Michigan R 336.1278 and 336.1278a provide limitation on the use of the specific exemptions provided in R 336.1280–336.1290, and require sources using the exemptions to maintain certain records to demonstrate that the exemptions have been applied appropriately. Michigan R 336.1278 excludes any activity that would be subject to PSD or major non-attainment permitting from use of the exemptions. The rule also defines activity to include all ''concurrent and related installation, construction, reconstruction, relocation, or modification of any process or process equipment'' which will ensure that projects are aggregated properly before applying an exemption. Michigan R 336.1278a requires owner/operators applying an exemption to maintain records and a written demonstration supporting application of the exemption. Additionally, specific exemptions may include additional monitoring and recordkeeping as required to ensure that the equipment is operating as required under the exemption.

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The exemptions only apply to the need to obtain a PTI prior to construction. Exempt units would still be required to comply with any non-PTI related SIP requirements or standards under the CAA. The 2003 and 2017 submittals provide an estimation of emissions that could result from each exemption. Many of these exemptions would result in very low levels of emissions, generally less than 3 tons per year of a regulated pollutant. Several would likely result in no emission of a regulated pollutant. Where an exemption could result in an increase of a regulated pollutant in amounts greater than 10 tons per year, MDEQ provided modeling, or in the case of ozone a qualitative analysis to demonstrate that the emissions that could result from the exempt categories would have no significant impact on compliance with the NAAQS. After reviewing the information provided by MDEQ, EPA agrees that the exemptions are unlikely to result in a violation of the NAAQS.

## III. What action is EPA taking?

EPA is proposing to approve all changes submitted by MDEQ except for changes to Michigan R 336.1205 which includes provisions for public notice. EPA will not be taking any action with respect to the changes in public notice and will be addressing Michigan R 336.1205 in a separate action. The already approved public notice procedures will remain in the SIP until EPA takes action on Michigan R 336.1205.

## IV. Incorporation by Reference

In this rule, EPA proposes to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA proposes to incorporate by reference Michigan's updated permitting rules including 336.1209, effective 07/26/1995; 336.1201a, 336.1203, 336.1204, 336.1206, 336.1212, 336.1216, effective 07/01/2003; 336.1201, 336.1202, 336.1207, 336.1219, 336.1240, 336.1241, 336.1278, 336.1299, effective 06/20/2008; and 336.1278a, 336.1280, 336.1281, 336.1282, 336.1283, 336.1284, 336.1285, 336.1286, 336.1287, 336.1288, 336.1289, 336.1290, effective 12/20/2016. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 27, 2017.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 2017–17230 Filed 8–14–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2016–0634; FRL–9966–32–Region 4]**

## Air Plan Approval; Georgia; Regional Haze Progress Report

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia, Department of Natural Resources, through the Georgia Environmental Protection Division (GA EPD) on January 8, 2014. Georgia's January 8, 2014, SIP revision (Progress Report) addresses requirements of the Clean Air Act (CAA or Act) and EPA's rules that require each state to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing SIP addressing regional haze (regional haze plan). EPA is proposing to approve Georgia's determination that the State's regional haze plan is adequate to meet these RPGs for the first implementation period covering through 2018 and requires no substantive revision at this time.

**DATES:** Comments must be received on or before September 14, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0634 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached by phone at (404) 562–9031 and via electronic mail at *notarianni.michele@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

States are required to submit a progress report in the form of a SIP revision during the first implementation period that evaluates progress towards the RPGs for each mandatory Class I federal area [1] (Class I area) within the state and for each Class I area outside the state which may be affected by emissions from within the state. 40 CFR 51.308(g). In addition, the provisions of 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of the adequacy of the state's existing regional haze plan. The first progress report is due five years after submittal of the initial regional haze plan. Georgia submitted its first regional haze plan on February 11, 2010, and supplemented its plan on November 19, 2010.[2]

Like many other states subject to the Clean Air Interstate Rule (CAIR), Georgia relied on CAIR in its regional haze plan to meet certain requirements of EPA's Regional Haze Rule, including best available retrofit technology (BART) requirements for emissions of sulfur dioxide ($SO_2$) and nitrogen oxides (NOx) from certain electric generating units (EGUs) in the State.[3] This reliance was consistent with EPA's regulations at the time that Georgia developed its regional haze plan. *See* 70 FR 39104 (July 6, 2005). However, in 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C.

[1] Areas designated as mandatory Class I federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). These areas are listed at 40 CFR part 81, subpart D.

[2] Georgia's February 11, 2010, regional haze plan as supplemented on November 19, 2010, is hereinafter collectively referred to as Georgia's regional haze plan unless otherwise specified.

[3] CAIR required certain states, including Georgia, to reduce emissions of $SO_2$ and $NO_X$ that significantly contribute to downwind nonattainment of the 1997 National Ambient Air Quality Standard (NAAQS) for fine particulate matter ($PM_{2.5}$) and ozone. *See* 70 FR 25162 (May 12, 2005).

Circuit) remanded CAIR to EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and issued Federal Implementation Plans (FIPs) to implement the rule in CSAPR-subject states.[4] Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR would have superseded the CAIR program. However, numerous parties filed petitions for review of CSAPR, and at the end of 2011, the D.C. Circuit issued an order staying CSAPR pending resolution of the petitions and directing EPA to continue to administer CAIR. Order of December 30, 2011, in *EME Homer City Generation, L.P.* v. *EPA,* D.C. Cir. No. 11–1302.

On June 28, 2012 (77 FR 38501), EPA finalized a limited approval of Georgia's regional haze plan as meeting some of the applicable regional haze requirements of the first implementation period for regional haze. In a separate action published on June 7, 2012 (77 FR 33642), EPA finalized a limited disapproval of Georgia's regional haze plan because of deficiencies arising from the State's reliance on CAIR to satisfy certain regional haze requirements. In the June 7, 2012, action, EPA also promulgated FIPs to replace reliance on CAIR with reliance on CSAPR to address deficiencies in CAIR-dependent regional haze plans of several states, including Georgia's regional haze plan.

On August 21, 2012, the D.C. Circuit issued its ruling on CSAPR, vacating and remanding the Rule to EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's vacatur of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets include the Phase 2 $SO_2$ emissions budget for Georgia. This litigation ultimately delayed implementation of CSAPR for three years, from January 1, 2012, when CSAPR's cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015. Thus, the rule's Phase 2 budgets, originally promulgated to begin on January 1, 2014, began on January 1, 2017. On July 26, 2017, Georgia submitted a SIP revision that adopts provisions for participation in the CSAPR annual $NO_X$ and annual $SO_2$ trading programs, including annual $NO_X$ and annual $SO_2$ budgets that are equal to the budgets for Georgia in EPA's CSAPR FIP.

On January 8, 2014, Georgia submitted its Progress Report which, among other things, details the progress made in the first period toward implementation of the long term strategy outlined in the State's regional haze plan; the visibility improvement measured at the three Class I areas within its borders (Cohutta Wilderness Area, Okefenokee Wilderness Area, and Wolf Island Wilderness Area) and at Class I areas outside of the State potentially impacted by emissions from Georgia; and a determination of the adequacy of the State's existing regional haze plan. EPA is proposing to approve Georgia's January 8, 2014, Progress Report for the reasons discussed below.

## II. EPA's Evaluation of Georgia's Progress Report and Adequacy Determination

### *A. Regional Haze Progress Report*

This section includes EPA's analysis of Georgia's Progress Report and an explanation of the basis for the Agency's proposed approval.

1. Control Measures

In its Progress Report, Georgia summarizes the status of the emissions reduction measures that were included in the final iteration of the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) regional haze emissions inventory and RPG modeling used by the State in developing its regional haze plan. The measures include, among other things, applicable federal programs (*e.g.,* mobile source rules and Maximum Achievable Control Technology standards) and federal and state control strategies for EGUs. Georgia also described the court decisions addressing CAIR and CSAPR at the time of Progress Report development.

As discussed above, a number of states, including Georgia, submitted regional haze plans that relied on CAIR to meet certain regional haze requirements. EPA finalized a limited disapproval of Georgia's regional haze plan due to this reliance and promulgated a FIP to replace reliance on CAIR with reliance on CSAPR. The D.C. Circuit ultimately affirmed CSAPR in most respects, and CSAPR is now in effect. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015). Georgia notes in its Progress Report that CAIR was in effect due to the D.C. Circuit's decisions at the time of submittal. Because CSAPR should result in greater emissions reductions of $SO_2$ and $NO_X$ than CAIR throughout the affected region, EPA expects Georgia to maintain and continue its progress towards its RPGs for 2018 through continued, and additional, $SO_2$ and $NO_X$ reductions. *See generally* 76 FR 48208 (August 8, 2011).

In its Progress Report, Georgia identifies the status of implementation of $SO_2$ controls required by Georgia Rule 391–3–1–.02(2)(sss)—''Multipollutant Rule'' (Rule (sss)) that were scheduled to be installed at the time of the original regional haze plan submittal. Rule (sss), enacted in response to CAIR, requires the installation and operation of flue gas desulfurization (FGD) to control $SO_2$ emissions and selective catalytic reduction (SCR) to control $NO_X$ emissions on the majority of the coal-fired EGUs in Georgia. The State notes that these controls will reduce $NO_X$ emissions from these EGUs by approximately 85 percent and reduce $SO_2$ emissions by at least 95 percent. The implementation dates vary by EGU, starting on December 31, 2008, and ending on December 31, 2015. To date, all planned controls have been implemented either early or on time. By installing and operating FGD and SCR controls in accordance with Rule (sss), Georgia EGUs also met the requirements of CAIR. In its regional haze plan and Progress Report, Georgia focuses its assessment on $SO_2$ emissions from EGUs because of VISTAS' findings that ammonium sulfate accounted for more than 70 percent of the visibility-impairing pollution in the VISTAS states[5] and that $SO_2$ point source emissions are projected to represent more than 95 percent of the total $SO_2$ emissions in the VISTAS states in

[4] CSAPR requires 27 Eastern states to limit their statewide emissions of $SO_2$ and/or $NO_X$ in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: The 1997 ozone NAAQS, the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 2008 8-hour ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide budgets for emissions of annual $SO_2$, annual $NO_X$, and/or ozone-season $NO_X$ by each covered state's large EGUs.

[5] Sulfate levels on the 20 percent worst days account for 60–70 percent of the visibility impairment at Georgia's Class I areas. For additional information, see Georgia's February 11, 2010, regional haze plan submittal at page 13.

2018.[6] As discussed below in Section II.A.5, Georgia determined that sulfates continue to be the largest contributor to regional haze for Class I areas in the State.

Georgia also reviewed the status of $SO_2$ controls for 11 non-EGU emissions units at seven facilities in the State which were included in the universe of emissions units initially determined eligible for a reasonable progress control analysis.[7] Of these 11 emissions units, six units at three facilities accepted permit limits to exempt out of being subject to a reasonable progress control analysis;[8] the State determined that the BART-related controls for three units at two facilities satisfied reasonable progress;[9] and for the remaining two units at two facilities, Georgia required additional controls.[10] At the time of Progress Report submission, all units have required permit limits in place and have met or are expected to meet the required control due dates.[11]

In addition, the State discusses the status of several measures that were not included in the final VISTAS emissions inventory and were not relied upon in the initial regional haze plan to meet RPGs, including EPA's Mercury and Air Toxics Rule, a 2011 federal consent agreement with the Tennessee Valley Authority, and EGU retirements and fuel conversions that have occurred or are planned to occur before 2018. Georgia Power decertified and retired 15 fossil fuel fired EGUs (10 coal-fired, three oil-fired, and two gas-fired units) between 2013 and 2016.[12] Further, Georgia Power's Yates Steam Electric Generating Plant converted Units 6 and 7 from coal to natural gas.[13] The State notes that the emissions reductions from these measures will help ensure that Class I areas impacted by Georgia sources achieve their RPGs.

Regarding the impact of sources outside of the State on Class I areas in Georgia, GA EPD sent letters to Florida, South Carolina, and Tennessee pertaining to emissions units within these states that it believes contribute to visibility impairment at Georgia's Class I areas using the State's methodology for determining sources eligible for a reasonable progress control determination.[14] Georgia consulted with these states regarding these sources and opted not to rely upon any additional emissions reductions from sources located outside the State's boundaries beyond those already identified in the State's regional haze plan.[15]

Regarding the impact of Georgia's sources on Class I areas outside of the State, Georgia applied its area of influence methodology to identify sources in the State that have emissions units with impacts large enough to potentially warrant further evaluation and analysis because, at the time of Georgia's SIP development, many of these states had not yet defined their criteria for identifying sources to evaluate for reasonable progress. The State identified eight emissions units in Georgia within the area of influence of seven Class I areas in five neighboring states. Georgia determined that there are no additional control measures for these Georgia emissions units that would be reasonable to implement to mitigate visibility impacts in Class I areas in the five neighboring states.[16]

EPA proposes to find that Georgia adequately addressed the applicable provisions under 40 CFR 51.308(g) regarding the implementation of control measures for the reasons discussed below. The State documents the implementation status of measures from its regional haze plan in addition to describing additional measures not originally accounted for in the final VISTAS emissions inventory that came into effect since the VISTAS analyses for the regional haze plan were completed. Georgia reviewed the status of BART requirements for the two BART-subject non-EGU sources in the State and reviewed the status of additional reasonable progress controls for these two sources. The State's Progress Report also discusses the status of existing and future expected $SO_2$ controls for Georgia's EGUs because, in its regional haze plan, Georgia identified $SO_2$ emissions from coal-fired EGUs as the key contributor to regional haze in the VISTAS region.

2. Emissions Reductions

As discussed above, Georgia focused its assessment on $SO_2$ emissions from EGUs because of VISTAS' findings that ammonium sulfate is the primary component of visibility-impairing pollution in the VISTAS states. In its Progress Report, Georgia presents $SO_2$ emissions data for 23 coal-fired EGUs at seven facilities in the State that, at the time the State submitted its February 11, 2010, regional haze plan, were scheduled to install $SO_2$ controls as a result of Rule (sss).[17] Eleven of these coal-fired EGUs were identified by Georgia as having visibility impacts at one or more neighboring Class I areas. As of the time that Georgia developed its Progress Report, all planned controls had been implemented either early or on time and the requirements for controls in 2013 or later are still in place. Georgia Power—Plant McDonough retired Units 1 and 2 prior to their control dates in 2012 and 2011, respectively, for FGD controls.

Based on EGU emissions projections from its regional haze plan, Georgia notes that the estimated total $SO_2$ emission reductions for these coal-fired EGUs from 2002 to 2018 would be 441,989 tons per year (tpy) and from 2002 to 2009 would be 161,949 tpy. Actual $SO_2$ emissions reductions implemented by the end of 2009 totaled 184,215 tpy of $SO_2$, over 20,000 tpy greater than originally projected through 2009 in Georgia's regional haze plan. Georgia also estimates in its Progress Report that an additional 93,000 tons of $SO_2$ emissions reductions were achieved from 2010 through 2012.[18]

[6] For additional information, see Georgia's February 11, 2010, regional haze plan submittal at page 76.

[7] See Table 2–3 of Georgia's Progress Report, pp.20–22. This table excludes EGU and non-EGU units where existing controls or CAIR controls were determined to satisfy reasonable progress for the first implementation period.

[8] The following six units in Georgia have permit limits which exempt them from being eligible for a reasonable progress analysis: Packaging Corporation of America C E Boiler; Rayonier Performance Fibers—Jessup Mill Power Boilers 2 and 3 and Recovery Furnaces 1 and 4; and Southern States Phosphate and Fertilizer Sulfuric Acid Plant 2.

[9] The following three units in Georgia have implemented BART-related controls by the required due dates: Georgia Pacific Cedar Springs—Power Boilers U500 and U501 (BART exemption limits) and Interstate Paper Power Boiler F1 (BART control limits).

[10] The following two units in Georgia are applying additional control measures to meet their permit limits which satisfy reasonable progress: Georgia Pacific Brunswick Cellulose Power Boiler No. 4 and International Paper—Savannah Mill Power Boiler 13.

[11] See Table 2–3 of Georgia's Progress Report, pp.20–22.

[12] See page 24 of Georgia's Progress Report and a November 18, 2016, email from Georgia to EPA documenting these EGU retirements. The Progress Report, email from the State, and associated documentation of these retirements and fuel conversions are located in the docket for this proposed action.

[13] Id.

[14] *See* 77 FR 11474–11475.

[15] *See* 77 FR 11475.

[16] In its regional haze plan, the State identified, through an area of influence modeling analysis based on back trajectories, seven Class I areas in five neighboring states potentially impacted by Georgia sources using the State's reasonable progress eligibility criteria as a screening tool: Sipsey Wilderness Area (AL), Saint Marks Wilderness Area (FL), Shining Rock Wilderness Area (NC), Swanquarter Wilderness Area (NC), Great Smoky Mountains National Park (NC/TN), Joyce Kilmer-Slickrock Wilderness Area (NC/TN), and Cape Romain Wilderness Area (SC). *See* 77 FR 11474 (February 27, 2012). Georgia evaluated the 20 percent worst day visibility conditions for these areas. See pages 42–43 and Appendix D of Georgia's Progress Report.

[17] See Table 2–2 on pages 15–18 of Georgia's Progress Report.

[18] See page 14 of Georgia's Progress Report.

Georgia's Progress Report also includes $SO_2$ and $NO_X$ emissions data from 2002–2011 for EGUs in the State and for EGUs in the VISTAS region that are subject to reporting under the Acid Rain Program. This data shows a decline in these emissions over this time period. From 2002–2011, $SO_2$ emissions from these EGUs in Georgia decreased by 325,795 tons annually. Table 1 shows actual $SO_2$ emissions from Georgia EGUs obtained from EPA's Clean Air Markets Division (CAMD) database. EGU $SO_2$ emissions dropped from 2007 to 2011 by 448,625 tons.

TABLE 1—GEORGIA EGU $SO_2$ EMISSIONS FROM CAMD

[2007–2011]

| $SO_2$ Emissions (tons) | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|
| CAMD EGU Emissions | 635,484 | 514,539 | 262,337 | 218,904 | 186,859 |
| Change from 2007 | 0 | 120,945 | 373,147 | 416,580 | 448,625 |

EPA proposes to conclude that Georgia has adequately addressed 40 CFR 51.308(g). As discussed above, the State provides estimates, and where available, actual emissions reductions of $SO_2$ and $NO_X$ at EGUs in the State.

3. Visibility Progress

In its Progress Report, Georgia provides figures with visibility monitoring data for the State's three Class I areas. Georgia reported current conditions as the 2006–2010 five-year time period and used the 2000–2004 baseline period for its Class I areas.[19] Table 2 shows the current visibility conditions and the difference between current visibility conditions and baseline visibility conditions. Table 3 shows the changes in visibility from 2005–2010 in terms of five-year averages.

TABLE 2—BASELINE VISIBILITY, CURRENT VISIBILITY, AND VISIBILITY CHANGES IN CLASS I AREAS IN GEORGIA

| Class I area | Baseline (2000–2004) | Current (2006–2010) | Difference | RPG (2018) |
|---|---|---|---|---|
| *20% Worst Days* | | | | |
| Cohutta | 30.25 | 26.18 | −4.07 | 22.80 |
| Okefenokee | 27.13 | 25.01 | −2.13 | 23.82 |
| Wolf Island | 27.13 | 25.01 | −2.13 | 23.82 |
| *20% Best Days* | | | | |
| Cohutta | 13.77 | 12.18 | −1.59 | 11.75 |
| Okefenokee | 15.23 | 14.19 | −1.04 | 13.92 |
| Wolf Island | 15.23 | 14.19 | −1.04 | 13.92 |

TABLE 3—CHANGES IN FIVE-YEAR VISIBILITY AVERAGES FROM 2005–2010

| Class I area | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | Change (2010–2005) |
|---|---|---|---|---|---|---|---|
| *20% Worst Days* | | | | | | | |
| Cohutta[20] | 30.43 | 30.52 | 30.43 | 29.63 | 28.01 | 26.18 | −4.24 |
| Okefenokee | 27.14 | 27.24 | 27.21 | 26.88 | 26.00 | 25.01 | −2.13 |
| Wolf Island | 27.14 | 27.24 | 27.21 | 26.88 | 26.00 | 25.01 | −2.13 |
| *20% Best Days* | | | | | | | |
| Cohutta[21] | 13.88 | 13.63 | 13.62 | 13.43 | 12.5 | 12.18 | −1.70 |
| Okefenokee | 14.95 | 15.03 | 14.90 | 14.90 | 14.46 | 14.19 | −0.75 |
| Wolf Island | 14.95 | 15.03 | 14.90 | 14.90 | 14.46 | 14.19 | −0.75 |

All Georgia Class I areas saw an improvement in visibility between baseline and 2006–2010 conditions and an overall decline in the five-year visibility averages from 2006–2010.

EPA proposes to find that Georgia has adequately addressed the applicable provisions under 40 CFR 51.308(g) regarding visibility conditions because the State provided baseline visibility conditions (2000–2004), current conditions based on the most recently available visibility monitoring data available at the time of Progress Report development, and the change in visibility impairment from 2006–2010.

4. Emissions Tracking

In its Progress Report, Georgia includes data from a statewide actual emissions inventory for 2007 and compares this data to the baseline emissions inventory for 2002 (actual and typical emissions) from its regional haze plan.[22] The pollutants inventoried include volatile organic compounds (VOC), ammonia ($NH_3$), $NO_X$, coarse particulate matter ($PM_{10}$), fine

[19] For the first regional haze plans, ''baseline'' conditions were represented by the 2000–2004 time period. *See* 64 FR 35730 (July 1, 1999). Wolf Island Wilderness Area does not have a visibility monitor; therefore, visibility data from Okefenokee Wilderness Area is used for both areas given their proximity. For more information, see 77 FR 11459.

[20] There is no annual average for Cohutta for the year 2006.

[21] Id.

[22] For the typical 2002 stationary point source emissions inventory, Georgia adjusted the EGU emissions for a typical year so that if sources were shut down or operating above or below normal, the emissions are normalized to a typical emissions inventory year. The purpose is to smooth out potential anomalies in EGU emissions (related to meteorology, economic, and outage factors) in a given year. The typical year data is used to develop projected typical future year emissions inventories.

particulate matter ($PM_{2.5}$), and $SO_2$.[23] The emissions inventories include the following source classifications: Point, area, biogenics, non-road mobile, and on-road mobile sources.

Georgia's Progress Report narrative includes the actual and typical emissions inventories from its regional haze plan for 2002, and summarizes actual emissions data for $SO_2$, $NO_X$, and $PM_{2.5}$ from 2007.[24] Although EPA's 2008 National Emissions Inventory was available, Georgia believes that the 2007 inventory was a more accurate and more detailed inventory because additional work was done to improve and verify its accuracy. Georgia estimated on-road mobile source emissions in the 2007 inventory using EPA's MOVES model. This model tends to estimate higher emissions for $NO_X$ and PM than its previous counterpart, EPA's MOBILE6.2 model, used by the State to estimate on-road mobile source emissions for the 2002 inventories. Georgia also included projected emissions data from its February 11, 2010, regional haze plan submittal for these visibility-impairing pollutants for the years 2009 and 2018.

Table 4 shows that actual emissions of $PM_{2.5}$ in 2007 are slightly higher than 2002 emissions. Both the 2002 and 2007 actual emissions inventories are lower than the projected emissions for 2009 and 2018 from Georgia's regional haze plan. The State notes that the increase in on-road mobile $PM_{2.5}$ emissions from 2002 to 2007 is due to the change from MOBILE 6.2 to the MOVES model and that the decrease in area source $PM_{2.5}$ emissions from 2002 to 2007 is mainly due to a change in the methodology used for calculating this sector's emissions.

TABLE 4—$PM_{2.5}$ EMISSIONS

[tons]

| Sector | 2002 Actual | 2002 Typical | 2007 Actual | 2009 Projected | 2018 Projected |
|---|---|---|---|---|---|
| Point | 22,401 | 22,532 | 25,058 | 29,890 | 36,297 |
| Area | 103,726 | 103,726 | 83,594 | 111,924 | 123,610 |
| On-road | 5,168 | 5,168 | 13,681 | 3,840 | 2,380 |
| Non-road | 8,226 | 8,226 | 6,608 | 7,175 | 5,730 |
| Fires | 57,293 | 55,712 | 68,766 | 57,087 | 57,087 |
| Total | 196,814 | 195,364 | 197,707 | 209,916 | 225,104 |

Table 5 shows that actual emissions of $NO_X$ in 2007 are slightly higher than 2002 emissions. With the exception of area sources, both the 2002 and 2007 actual emissions inventories for all other source categories remain higher than or approximately equal to the projected emissions for 2009 and 2018 from Georgia's regional haze plan. Georgia notes that the increase in on-road mobile $NO_X$ emissions from 2002 to 2007 is due to the change to the MOVES model; the decrease in area source $NO_X$ emissions is mainly due to a change in the methodology used for calculating this sector's emissions and the decrease in point source $NO_X$ is due to the installation of emissions controls. Georgia notes in its Progress Report that if there was no change in the mobile model used, the State would expect that 2007 emissions would be less than the 2002 base year emissions for $NO_X$.

TABLE 5—$NO_X$ EMISSIONS

[tons]

| Sector | 2002 Actual | 2002 Typical | 2007 Actual | 2009 Projected | 2018 Projected |
|---|---|---|---|---|---|
| Point | 196,767 | 197,377 | 154,041 | 148,850 | 125,680 |
| Area | 36,105 | 36,105 | 12,351 | 37,689 | 41,282 |
| On-road | 307,732 | 307,732 | 396,837 | 209,349 | 102,179 |
| Non-road | 97,961 | 97,961 | 91,081 | 85,733 | 64,579 |
| Fires | 14,203 | 13,882 | 19,429 | 14,236 | 14,236 |
| Total | 652,768 | 653,057 | 673,739 | 495,857 | 347,956 |

Table 6 shows that actual emissions of $SO_2$ from point sources and fires are higher in 2007 than 2002. Georgia notes that the decrease in area source $SO_2$ emissions is mainly due to a change in the methodology used for calculating this sector's emissions and that the increase in point source $SO_2$ emissions from 2002 to 2007 is due to increased electricity generation. Despite the increase from 2002 to 2007 in point source emissions of $SO_2$, significant emissions reductions occurred in this sector from 2007 to 2011 (as summarized in Table 1, above). The State attributes these decreased emissions to FGD being installed at several of the coal-fired EGUs in Georgia.

[23] See Appendices F through I of Georgia's Progress Report for inventories of these pollutants.

[24] Georgia focuses on the visibility-impairing pollutants of $SO_2$, $NO_X$, and $PM_{2.5}$ in its Progress Report narrative because VISTAS performed modeling sensitivity analyses which demonstrated that anthropogenic emissions of VOC and $NH_3$ do not significantly impair visibility in the VISTAS region, including Georgia. *See* 77 FR 11456, 11460 (February 27, 2012).

TABLE 6—$SO_2$ EMISSIONS

[tons]

| Sector | 2002 Actual | 2002 Typical | 2007 Actual | 2009 Projected | 2018 Projected |
|---|---|---|---|---|---|
| Point | 568,731 | 571,411 | 683,358 | 462,666 | 127,864 |
| Area | 57,555 | 57,555 | 4,858 | 57,692 | 59,724 |
| On-road | 12,184 | 12,184 | 6,407 | 1,585 | 1,457 |
| Non-road | 9,005 | 9,005 | 5,983 | 2,725 | 1,709 |
| Fires | 3,372 | 2,815 | 4,492 | 2,912 | 2,912 |
| Total | 650,847 | 652,970 | 705,098 | 527,580 | 193,666 |

EPA proposes to find that Georgia adequately addressed the provisions of 40 CFR 51.308(g) regarding emissions tracking because the State compared the most recent updated emission inventory data available at the time of Progress Report development with the baseline emissions used in the modeling for the regional haze plan.

5. Assessment of Changes Impeding Visibility Progress

In its Progress Report, Georgia documented that sulfates, which are formed from $SO_2$ emissions, continue to be the biggest single contributor to regional haze for Class I areas in the VISTAS states, including Georgia, and therefore focused its analysis on large $SO_2$ emissions from point sources. Specifically, Georgia provided data showing the composition of $PM_{2.5}$ (''speciated data'') for Class I areas in the VISTAS region and bordering areas, including Cohutta and Okefenokee, for the years 2001 through 2010. This speciated data shows that ammonium sulfate continues to be the most important contributor to visibility impairment and fine particle mass on the 20 percent worst and 20 percent best visibility days at all of Georgia's Class I areas.[25] The State notes that there are no significant changes in anthropogenic emissions that have impeded progress in reducing emissions and improving visibility in Class I areas impacted by Georgia sources, and refers to decreases in point source $SO_2$ emissions from 2002 to 2011. Given the heat input data reported by CAMD, the State concludes that these reductions are not attributable to reduced power demand. Furthermore, the Progress Report shows that the State is on track to meeting its 2018 RPGs for Class I areas in Georgia.

EPA proposes to find that Georgia has adequately addressed the provisions of 40 CFR 51.308(g) regarding an assessment of significant changes in anthropogenic emissions. EPA preliminarily agrees with Georgia's conclusion that there have been no significant changes in emissions of visibility-impairing pollutants which have limited or impeded progress in reducing emissions and improving visibility in Class I areas impacted by the State's sources.

6. Assessment of Current Strategy

The State believes that it is on track to meet the 2018 RPGs for Georgia Class I areas and will not impede Class I areas outside of Georgia from meeting their RPGs based on the trends in visibility and emissions presented in its Progress Report. As noted above, Georgia provided speciated data for the period 2006 to 2010 for the 20 percent best and worst days at Class I areas in and surrounding the VISTAS region, including Okefenokee and Cohutta, showing that sulfates continue to be the largest contributor to visibility impairment at these Class I areas.[26] Georgia's Progress Report shows that $SO_2$ emissions from EGUs in Georgia have decreased from 2002 to 2011 by 325,795 tons; that visibility has improved on the 20 percent worst days for the State's Class I areas and the Class I areas potentially impacted by the State's sources (Cape Romain National Wilderness Area in South Carolina, Shining Rock and Swanquarter Wilderness Areas in North Carolina, Joyce Kilmer—Slick Rock Wilderness Area and Great Smoky Mountains National Park in North Carolina and Tennessee, St. Marks National Wilderness Area in Florida, and Sipsey Wilderness Area in Alabama); and that these areas are on track to achieve their RPGs by 2018.[27]

As discussed in Section II.A.1, above, CAIR was implemented during the time period evaluated by Georgia for its Progress Report, but has now been replaced by CSAPR. At the present time, the requirements of CSAPR apply to sources in Georgia under the terms of a FIP. Georgia's regional haze plan accordingly does not contain sufficient provisions to ensure that the RPGs of Class I areas in nearby states will be achieved. The term ''implementation plan,'' however, is defined for purposes of the Regional Haze Rule to mean ''any [SIP], [FIP], or Tribal Implementation Plan.'' 40 CFR 51.301. Measures in any issued FIP, as well as those in a state's regional haze plan, may therefore be considered in assessing the adequacy of the ''existing implementation plan.'' As noted above, Georgia submitted a SIP revision on July 26, 2017, that adopts provisions for participation in the CSAPR annual $NO_X$ and annual $SO_2$ trading programs, including annual $NO_X$ and annual $SO_2$ budgets that are equal to the budgets for Georgia in EPA's CSAPR FIP.

EPA proposes to find that Georgia has adequately addressed the provisions of 40 CFR 51.308(g) regarding the strategy assessment. In its Progress Report, Georgia described the improving visibility trends using data from the IMPROVE network and the downward emissions trends in $NO_X$ and $SO_2$ emissions from EGUs in the State. These trends support the State's determination that its regional haze plan is sufficient to meet RPGs for Class I areas within and outside the State potentially impacted by Georgia sources. EPA finds that Georgia's conclusion regarding the sufficiency of its regional haze plan is appropriate because CAIR was in effect in Georgia through 2014, providing the emission reductions relied upon in Georgia's regional haze plan through that date. CSAPR is now being implemented, and by 2018, the end of the first regional haze implementation period, CSAPR will reduce emissions of $SO_2$ and $NO_X$ from EGUs in Georgia by the same amount assumed by EPA when it issued the CSAPR FIP for Georgia. Because CSAPR will ensure the control of $SO_2$ and $NO_X$ emissions reductions relied upon by Georgia and other states in setting their RPGs beginning in January 2015 at least through the

[25] See Appendices A and B of Georgia's Progress Report.

[26] See Figures 1–2, 1–3, 1–4, and 1–5 of Georgia's Progress Report on pages 5–7.

[27] See pages 42–43 of the narrative and Appendix D of Georgia's Progress Report.

remainder of the first implementation period in 2018, EPA is proposing to approve Georgia's finding that the plan elements and strategies in its implementation plan are sufficient to achieve the RPGs for the Class I area in the State and for Class I areas in nearby states potentially impacted by sources in the State.

7. Review of Current Monitoring Strategy

Georgia's Progress Report summarizes the existing monitoring network in the State to monitor visibility in Georgia's Class I areas and concludes that no modifications to the existing visibility monitoring strategy are necessary. The primary monitoring network for regional haze, both nationwide and in Georgia, is the IMPROVE network. There are currently two IMPROVE sites in Georgia. One is located in the Cohutta Wilderness Area. The other monitor is located in the Okefenokee Wilderness area and serves as the monitoring site for both the Okefenokee and Wolf Island Wilderness Areas.

The State also explains the importance of the IMPROVE monitoring network for tracking visibility trends at Class I areas in Georgia, noting that because IMPROVE monitoring data from 2000–2004 serve as the baseline for the regional haze program, the future regional haze monitoring strategy should be based on IMPROVE data (or data directly comparable to IMPROVE data). Georgia also highlights that the IMPROVE measurements provide the only long-term record available for tracking visibility improvement or degradation. The Visibility Information Exchange Web System Web site has been maintained by VISTAS and the other Regional Planning Organizations to provide ready access to the IMPROVE data and data analysis tools.

EPA proposes to find that Georgia has adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding monitoring strategy because the State reviewed its visibility monitoring strategy and determined that no further modifications to the strategy are necessary.

*B. Determination of Adequacy of Existing Regional Haze Plan*

In its Progress Report, Georgia submitted a declaration to EPA that the existing regional haze plan requires no further substantive revision at this time to achieve the RPGs for Class I areas affected by the State's sources. The basis for the State's declaration is the findings from the Progress Report, including the findings that: The control measures in Georgia's regional haze plan are on track to meet their implementation schedules; reduction of $SO_2$ emissions continues to be the appropriate strategy for improvement of visibility in Georgia's Class I areas; EGU $SO_2$ emissions dropped from 2002 to 2011 by 325,795 tons,[28] and the actual change in visibility through 2010 for Georgia's Class I areas is better than the what the State predicted for 2010 and is exceeding the uniform rate of progress.

EPA proposes to find that Georgia has adequately addressed 40 CFR 51.308(h) because the visibility trends at the Class I areas in the State and at Class I areas outside the State potentially impacted by sources within Georgia and the emissions trends of the largest emitters of visibility-impairing pollutants in the State indicate that the relevant RPGs will be met.

## III. Proposed Action

EPA is proposing to approve Georgia's Regional Haze Progress Report SIP revision, submitted by the State on January 8, 2014, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and 51.308(h).

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: August 7, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–17229 Filed 8–14–17; 8:45 am]

**BILLING CODE 6560–50–P**

[28] See page 39 of Georgia's Progress Report.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2017–0360; FRL–9966–39–Region 4]**

### Air Plan Approval; Alabama: Prevention of Significant Deterioration Updates

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of revisions to Alabama's State Implementation Plan (SIP), submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), on May 8, 2013, and August 23, 2016. The portions of these SIP revisions that EPA proposes to approve relate to the State's Prevention of Significant Deterioration (PSD) permitting program. This action is being proposed pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before September 14, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No EPA–R04–OAR–2017–0360 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Andres Febres of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Febres can be reached by telephone at (404) 562–8966 or via electronic mail at *febres-martinez.andres@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. What action is the agency taking?

On May 8, 2013, and August 23, 2016, ADEM submitted SIP revisions for EPA's approval that include changes to Alabama's PSD permitting regulations, among other changes.[1] In this document, EPA is proposing to approve certain portions of these submittals that make changes to ADEM Administrative Code Rule 335–3–14–.04—''Air Permits Authorizing Construction in Clean Areas (Prevention of Significant Deterioration (PSD),'' which applies to the construction or modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA.

Alabama's May 8, 2013 SIP submittal includes changes to Rule 335–3–14–.04 to address the Federal rule entitled ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$):[2] Amendment to the Definition of 'Regulated NSR Pollutant' Concerning Condensable Particulate Matter,'' 77 FR 65107 (October 25, 2012) (hereinafter referred to as the $PM_{2.5}$ Condensables Correction Rule), and plantwide applicability limits (PALs) for greenhouse gases (GHGs) as allowed in the Federal rule entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits,'' 77 FR 41051 (July 12, 2012) (hereinafter referred to as the GHG Step 3 Rule). In addition, the SIP submittal includes changes to the definition of GHGs in Rule 335–3–14–.04 and Rule 335–3–16 (regarding major source operating permits) to address EPA's July 20, 2011 rule deferring PSD requirements for carbon dioxide ($CO_2$) emissions from bioenergy and other biogenic sources (hereinafter referred to as the ''Biomass Deferral Rule'').[3] Alabama's May 8, 2013 SIP submission also includes the following changes to other Alabama rules: changes to the definition of Volatile Organic Compounds (VOCs) at Rule 335–3–1–.02; changes to the incorporation by reference (IBR) of the Federal New Source Performance Standards (NSPS) in Chapter 335–3–10 and National Emissions Standards for Hazardous Air Pollutants (NESHAPs) in Chapter 335–3–11; and changes regarding transportation conformity provisions at Rule Chapter 335–3–16.

Alabama's August 23, 2016 SIP submittal includes changes to Rule 335–3–14–.04 and Rule Chapter 335–3–16 to remove the treatment of GHGs as an air pollutant for the specific purpose of determining whether a source is a major source (or a modification thereof) in PSD and title V permitting requirements for the reasons discussed in Section II.A, below. The submittal also withdraws the portion of the State's May 8, 2013 SIP submittal that revises Rule 335–3–14–.04 to address the Biomass Deferral Rule and makes changes to the GHG Step 3 language proposed in Alabama's May 8, 2013 submittal.

Currently, EPA is only proposing to approve the portions of the May 8, 2013 submittal that make changes to the GHG

[1] EPA's regulations governing the implementation of New Source Review (NSR) permitting programs are contained in 40 CFR 51.160–51.166; 52.21, 52.24; and part 51, Appendix S. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS—''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The Minor NSR program addresses construction or modification activities that do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs.

[2] Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be ''fine particles'' and are also known as $PM_{2.5}$. Fine particles in the atmosphere are made up of a complex mixture of components including sulfate; nitrate; ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as ''crustal'' material, although it may contain material from other sources. The health effects associated with exposure to $PM_{2.5}$ include potential aggravation of respiratory and cardiovascular disease (*i.e.,* lung disease, decreased lung function, asthma attacks and certain cardiovascular issues). On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using $PM_{2.5}$ as the indicator. Previously, EPA used $PM_{10}$ (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting an annual standard at a level of 15.0 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$ (62 FR 38652). At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$ (71 FR 61236). On January 15, 2013, EPA published a final rule revising the annual $PM_{2.5}$ NAAQS to 12 $\mu g/m^3$ (78 FR 3086).

[3] Emissions of $CO_2$ from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon (*e.g.,* calcium carbonate) and biologically-based material (non-fossilized and biodegradable organic material originating from plants, animals or micro-organisms, including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

PAL provisions pursuant to the GHG Step 3 rule and the portions of the August 23, 2016 submittal that discontinue regulation of GHGs as an air pollutant for the specific purpose of determining whether a source is a major source (or a modification thereof) in PSD and title V permitting requirements and that make changes to the GHG Step 3 language proposed in Alabama's May 8, 2013 submittal. EPA is not acting on the remaining portions of these submittals for the following reasons:

- EPA previously acted upon the changes to the definition of VOCs at Rule 335–3–1–.02. *See* 81 FR 63701 (September 16, 2016).
- The revisions that address the Regulated $PM_{2.5}$ Condensables Correction Rule are unnecessary because the errors corrected by the Rule were never incorporated into Alabama's SIP.[4] *See* 77 FR 59100 (September 26, 2012).
- EPA will act on the transportation conformity revisions in a separate action.
- In its August 23, 2016 SIP revision, Alabama withdrew the portion of its May 8, 2013 SIP revision that addressed the Biomass Deferral Rule.
- ADEM Administrative Code Chapter 335–3–10—''Standards of Performance for New Stationary Sources,'' Chapter 335–3–11—''National Emission Standards for Hazardous Air Pollutants,'' and Chapter 335–3–16—''Major Source Operating permits,'' are not part of Alabama's SIP; therefore, EPA cannot make the changes to these regulations.

## II. Background

On January 2, 2011, GHG emissions were, for the first time, covered by the PSD and title V operating permit programs.[5] To establish a process for phasing in the permitting requirements for stationary sources of GHGs under the CAA PSD and title V programs, on June 3, 2010, EPA published a final rule entitled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (hereinafter referred to as the GHG Tailoring Rule). *See* 75 FR 31514. In Step 1 of the GHG Tailoring Rule, which began on January 2, 2011, EPA limited application of PSD and title V requirements to sources and modifications of GHG emissions, but only if they were subject to PSD or title V ''anyway'' due to their emissions of pollutants other than GHGs. These sources are referred to as ''anyway sources.''

In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the level in EPA regulations. EPA generally described the sources covered by PSD during Step 2 of the Tailoring Rule as ''Step 2 sources'' or ''GHG-only sources.''

Subsequently, EPA published the GHG Step 3 Rule on July 12, 2012. *See* 77 FR 41051. In this rule, EPA decided against further phase-in of the PSD and title V requirements for sources emitting lower levels of GHG emissions. Thus, the thresholds for determining PSD applicability based on emissions of GHGs remained the same as established in Steps 1 and 2 of the Tailoring Rule.

The GHG PALs portion of the July 12, 2012 final rule revised EPA regulations under 40 CFR part 52 for establishing PALs for GHG emissions. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without triggering the requirements of the PSD program, provided that its actual emissions at the facility do not exceed the PAL level. Prior to the July 12, 2012 rule, PALs were available for non-GHG pollutants and for GHGs on a mass basis. EPA's rule revised the PAL regulations to allow for GHG PALs to be established on a carbon dioxide equivalent ($CO_2e$)[6] basis, as well as a mass basis. *See* 77 FR 41051 (July 12, 2012). These regulatory changes provided sources with flexibility in implementing PALs for GHGs.

On June 23, 2014, the U.S. Supreme Court addressed the application of stationary source permitting requirements to GHG emissions in *Utility Air Regulatory Group (UARG)* v. *EPA,* 134 S. Ct. 2427 (2014). The Supreme Court upheld EPA's regulation of GHG Step 1—or ''anyway'' sources—but held that EPA may not treat GHGs as air pollutants for the purpose of determining whether a source is a major source (or is undergoing a major modification) and thus require the source to obtain a PSD or title V permit. Therefore, the Court invalidated PSD and title V permitting requirements for GHG Step 2 sources.

In accordance with the Supreme Court decision, on April 10, 2015, the D.C. Circuit issued an Amended Judgment vacating the regulations that implemented Step 2 of the GHG Tailoring Rule, but not the regulations that implement Step 1 of the GHG Tailoring Rule. *Coalition for Responsible Regulation, Inc.* v. *EPA,* 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). The D.C. Circuit's Judgment specifically vacated the EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification.'' *Id.* at 7–8.

EPA promulgated a good cause final rule on August 19, 2015, entitled ''Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Certain Vacated Elements.'' *See* 80 FR 50199 (August 19, 2015) (hereinafter referred to as the Good Cause GHG Rule). The rule removed from the Federal regulations the portions of the PSD permitting provisions for Step 2 sources that were vacated by the D.C. Circuit (*i.e.,* 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v)). EPA therefore no longer has the authority to conduct PSD permitting for Step 2 sources, nor can the Agency approve provisions submitted by a state for inclusion in their SIP providing this authority. In addition, on October 3, 2016, EPA proposed to revise provisions in the PSD permitting regulations applicable to GHGs to address the GHG applicability threshold for PSD in order to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized. *See* 81 FR 68110.

## III. Analysis of the State's Submittals

### *A. Alabama's May 8, 2013 Submittal*

Alabama's May 8, 2013 SIP submittal seeks to add to the Alabama SIP elements of EPA's July 12, 2012 rule implementing Step 3 of the phase-in of PSD permitting requirements for GHGs

[4] In a May 2, 2011 SIP revision, Alabama requested that EPA incorporate the term ''Particulate matter (PM)'' emissions into its SIP-approved definition of ''regulated NSR pollutant'' at Rule 335–3–14–.04(2)(ww)5, among other changes. Following EPA's proposed approval of the $PM_{2.5}$ Condensables Correction Rule, Alabama submitted a supplemental letter on June 18, 2012, requesting that EPA not approve the proposed change at 335–3–14–.04(2)(ww)5 when taking action on the May 2, 2011, SIP revision.

[5] See the rule entitled ''Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs,'' Final Rule, 75 FR 17004 (April 2, 2010).

[6] $CO_2e$ emissions refers to emissions of six recognized GHGs other than $CO_2$ which are scaled to equivalent $CO_2$ emissions by relative global warming potential values, then summed with $CO_2$ to determine a total equivalent emissions value. *See* 40 CFR 51.166(48)(ii) and 52.21(49)(ii).

described in the GHG Step 3 Rule by modifying a PAL provision at Rule 335–3–14–.04(23)(b)4.[7] As explained in Section II above, a PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes to units at the facility without triggering the requirements of the PSD program, provided that facility-wide emissions do not exceed the PAL.

The Federal PSD regulations currently include PAL provisions that apply to GHG-only, or Step 2, sources. However, some of these provisions may no longer be applicable in light of the Supreme Court's decision in UARG and the D.C. Circuit's Amended Judgment. The Supreme Court determined that sources and modifications may not be defined as ''major'' solely on the basis of GHGs emitted or increased, and consequently PALs for GHGs may no longer be authorized in instances in which a source has triggered PSD based on GHG emissions alone. EPA has proposed action in an October 3, 2016 proposed rule to clarify the GHG PAL rules. *See* 81 FR 68110. However, PALs for GHGs may still have a role to play in determining whether a source that is already subject to PSD for a pollutant other than GHGs should also be subject to PSD for GHGs. The existing GHG PALs regulations do not add new requirements for sources or modifications that only emit or increase GHGs above the major source threshold, or the 75,000 ton per year (tpy) GHG level in 40 CFR 52.21(b)(49)(iv), but rather provide increased flexibility to sources that wish to manage their GHG emissions by way of a PAL.

In its May 8, 2013 SIP submittal, Alabama seeks to modify the definition of ''major emissions unit'' in its SIP-approved PAL regulations by adding the phrase ''any emissions unit that has the potential to emit 100,000 tons per year of GHG as CO2e.'' The State subsequently revised this threshold from 100,000 tpy to 75,000 tpy as part of its August 23, 2016 submittal, as discussed below. Given this subsequent revision, the text that EPA is proposing to add to the SIP-approved definition of ''major emissions unit'' at Rule 335–3–14–.04(23)(b)4. reads as follows: ''any emissions unit that has the potential to emit 75,000 tons per year of GHG as CO2e'' into the SIP-approved definition of ''major emissions unit'' at Rule 335–3–14–.04(23)(b)4.

EPA has preliminarily concluded that approving these changes into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. EPA discussed the effects of PALs in the Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (2002 Supplemental Analysis). The Supplemental Analysis explained, ''[t]he EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits.'' Supplemental Analysis at 6; *see also* 76 FR 49313, 49315 (August 10, 2011). EPA further discussed the effects of PALs in the GHG Step 3 Rule, including the benefits of GHG PALs. *See* 77 FR 41059–60. EPA is therefore proposing to approve the changes to the PAL provisions into the Alabama SIP, as amended in the August 23, 2016 submittal discussed below.

*B. Alabama's August 23, 2016 Submittal*

Alabama's August 23, 2016 SIP submittal makes further changes to the State's PSD permitting regulation at Rule 335–3–14–.04. This submittal revises the GHG PALs threshold in Rule 335–3–14–.04(23)(b)4 proposed in the May 8, 2013, submittal from 100,000 tpy to 75,000 tpy, as mentioned in section III.A above.[8] The SIP submittal also revises the applicability of PSD for GHGs by removing language regulating GHG-only (*i.e.,* Step 2) sources in Rules 335–3–14–.04(1)(k) and 335–3–14–.04(2)(a) to align with current federal requirements, as discussed below.

Alabama modifies its applicability language for GHGs to regulate only ''anyway'' sources. The State revises Rule 335–3–14–.04(1)(k) in its PSD applicability regulations and the definition of ''Major Stationary Source'' at Rule 335–3–14–.04(2)(a) by removing language that would subject a source to PSD requirements through GHG emissions alone. The proposed revision to subparagraph (2)(a) removes the following text from the definition of ''major stationary source'': ''(iii) For GHGs, any stationary source which emits or has the potential to emit: (I) GHGs on a total mass rate in accordance with either subparagraph 2(a)1. or (2)(a)1.(i), and (II) GHGs of 100,000 tons per year or more $CO_2$e.'' The proposed revision to Rule 335–3–14–.04(1)(k) replaces subparagraph (k) with the following text:

(k) Greenhouse gases (GHGs)

1. GHGs, as defined in Subparagraph (2)(zz) of this Rule,[9] shall not be utilized in determining if a source is a major stationary source, as defined in Subparagraph (2)(a) of this Rule, or in determining if a modification is a major modification, as defined in Subparagraph (2)(b) of this Rule.

2. GHGs shall only be subject to the requirements of this Rule if:

(i) A new major stationary source or major modification causes a significant emissions increase of GHGs, as defined in subparagraph (2)(mm) of this rule,[10] and a significant net emissions increase of GHGs, as defined in subparagraphs (2)(c) and (2)(w) of this rule,[11] and

(ii) The new major stationary source or major modification is required to obtain a permit subject to the requirements of this Rule as a result of emissions of regulated NSR pollutants other than GHGs.

Although these proposed changes to the Alabama SIP are structured differently than EPA's federal rules, the primary practical effect of both is the same: PSD requirements do not apply to GHG emissions from an ''anyway source'' unless the source emits GHGs at or above the 75,000 tpy CO2e threshold.

EPA has preliminarily concluded that proposing approval of these change into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. Step 2 of the GHG Tailoring Rule was invalidated. As mentioned above, EPA discussed the effects of PALs in the 2002 Supplemental Analysis and the GHG Step 3 Rule.

## IV. Incorporation by Reference

In accordance with requirements of 1 CFR 51.5, EPA is proposing the incorporation by reference of ADEM Administrative Code Rules 335–3–14–.04(1)(k), 335–3–14–.04(2)(a)(ii), and 335–3–14–.04(b)4, state effective on November 25, 2014. Therefore, EPA is proposing approval for inclusion of these materials in Alabama's State implementation plan. Once final, and these materials have been incorporated

[7] As discussed in Section I above, EPA is not acting on the remaining portions of this submittal.

[8] As discussed in Section I, above, EPA is not acting on the remaining portions of this submittal. The submittal also withdraws the change proposed to Rule 335–3–14–.04(2)(zz) in the State's May 8, 2013 SIP submittal to address the Biomass Deferral Rule.

[9] Subparagraph (2)(zz) defines ''greenhouse gases'' as ''the aggregate of: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.''

[10] Pursuant to subparagraph (2)(mm), ''significant emissions increase means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in subparagraph (2)(w) of this rule) for that pollutant.''

[11] As it relates to GHGs, subparagraph (2)(w) defines ''significant,'' in reference to a net emissions increase or potential to emit, at a rate of 75,000 tpy of GHGs on a CO2e basis. This definition of ''significant'' was previously approved by EPA on December 29, 2010. *See* 75 FR 81863.

by reference by EPA into that plan, they are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[12] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

### V. Proposed Action

EPA is proposing to approve the portions of Alabama's May 8, 2013 and August 23, 2016 SIP submittals that revise the PSD permitting program at Rule 335–3–14–.04—''Air Permits Authorizing Construction in Clean Areas (Prevention of Significant Deterioration (PSD))'' by removing language regulating GHG-only (*i.e.,* Step 2) sources and by adding language to the PAL provisions. EPA believes that these changes are consistent with the requirements of the CAA.

### VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 (Public Law 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate Matter, Volatile organic compounds.

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

Dated: August 7, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–17220 Filed 8–14–17; 8:45 am]

**BILLING CODE 6560–50–P**

[12] *See* 62 FR 27968 (May 22, 1997).

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 20

**[Docket No. FWS–HQ–MB–2015–0073; FF09M21200–178–FXMB1231099BPP0]**

**RIN 1018–BB06**

## Migratory Bird Hunting; Approval of Corrosion-Inhibited Copper Shot as Nontoxic for Waterfowl Hunting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; availability of draft environmental assessment.

**SUMMARY:** Having completed our review of the application materials for corrosion-inhibited copper shot, the U.S. Fish and Wildlife Service (hereinafter Service or we) proposes to approve the shot for hunting waterfowl and coots. We have concluded that this type of shot left in terrestrial or aquatic environments is unlikely to adversely affect fish, wildlife, or their habitats. Approving this shot formulation would increase the nontoxic shot options for hunters.

**DATES:** Electronic comments on this proposal or on the draft environmental assessment via *http://www.regulations.gov* must be submitted by 11:59 p.m. Eastern time on September 14, 2017. Comments submitted by mail must be postmarked no later than September 14, 2017.

**ADDRESSES:** *Document Availability.* You may view the application and our draft environmental assessment by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for Docket No. FWS–HQ–MB–2015–0073.
- Request a copy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Written Comments:* You may submit comments on the proposed rule or the associated draft environmental assessment by either one of the following two methods:

- *Federal eRulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–HQ–MB–2015–0073.
- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–HQ–MB–2015–0073; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide.

**FOR FURTHER INFORMATION CONTACT:** Ron Kokel, Division of Migratory Bird Management, at 703–358–1967.

**SUPPLEMENTARY INFORMATION:**

### Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996, as amended), Mexico (1936 and 1972, as amended), Japan (1972 and

1974, as amended), and Russia (then the Soviet Union, 1978). These treaties protect most migratory bird species from take, except as permitted under the Act, which authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, we control the hunting of migratory game birds through regulations at 50 CFR part 20. We prohibit the use of shot types other than those listed in the Code of Federal Regulations (CFR) at 50 CFR 20.21(j) for hunting waterfowl and coots and any species that make up aggregate bag limits.

Deposition of toxic shot and release of toxic shot components in waterfowl hunting locations are potentially harmful to many organisms. Research has shown that ingested spent lead shot causes significant mortality in migratory birds. Since the mid-1970s, we have sought to identify types of shot for waterfowl hunting that are not toxic to migratory birds or other wildlife when ingested. We have approved nontoxic shot types and coatings and added them to the migratory bird hunting regulations at 50 CFR 20.21(j). We continue to review shot types and coatings submitted for approval as nontoxic following a process set forth at 50 CFR 20.134.

We addressed lead poisoning in waterfowl in an environmental impact statement (EIS) in 1976, and again in a 1986 supplemental EIS. The 1986 document provided the scientific justification for a ban on the use of lead shot and the subsequent approval of steel shot for hunting waterfowl and coots that began that year, with a complete ban of lead for waterfowl and coot hunting in 1991. We have continued to consider other potential nontoxic shot candidates for approval. We are obligated to review applications for approval of alternative shot types as nontoxic for hunting waterfowl and coots.

Many hunters believe that some nontoxic shot types compare poorly to lead and may damage some shotgun barrels. A small and decreasing percentage of hunters have not complied with nontoxic shot regulations. Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. The use of nontoxic shot for waterfowl hunting increased after the ban on lead shot (Anderson *et al.* 2000), but we believe that compliance would continue to increase with the availability and approval of other nontoxic shot types. Increased use of nontoxic shot will enhance protection of migratory waterfowl and their habitats. More important is that the Service is obligated to consider all complete nontoxic shot applications submitted to us for approval.

**Application**

Environ-Metal, Inc., of Sweet Home, Oregon, seeks approval of corrosion-inhibited copper shot as nontoxic. We evaluated the impact of approval of this shot type in a draft environmental assessment (see **ADDRESSES**, above, for information on viewing a copy of the draft environmental assessment). The data from Environ-Metal, Inc., indicate that the shot's coating will essentially eliminate copper exposure in the environment and to waterfowl if the shot is ingested. We believe that this type of shot will not pose a danger to migratory birds, other wildlife, or their habitats.

We have reviewed the shot under the criteria in Tier 1 of the nontoxic shot approval procedures at 50 CFR 20.134 for permanent approval of shot and coatings as nontoxic for hunting waterfowl and coots. We propose to amend 50 CFR 20.21(j) to add the shot to the list of those approved for waterfowl and coot hunting. Details on the evaluations of the shot can be found in the draft environmental assessment.

**Corrosion-Inhibited Copper Shot**

Corrosion-inhibited copper shot (CIC shot) consists of commercially pure copper that has been surface-treated with benzotriazole (BTA) to obtain insoluble, hydrophobic films of BTA-copper complexes (CDA 2009). These films are very stable; are highly protective against copper corrosion in both salt water and fresh water; and are used extensively to protect copper, even in potable water systems. Other high-volume applications include deicers for aircraft and dishwasher detergent additives, effluents of which may be directly introduced into municipal sewer systems, indicative of the exceptionally low environmental impact of BTA. ''The corrosion-inhibiting effectiveness of BTA-copper complex coating, based on actual testing conducted by the applicants and by others, is substantial.''

**Shot Coating and Test Device**

CIC shot will have an additional coating that will fluoresce under ultraviolet light. The coating is applied by a proprietary process, and coats the shot so that the layers of coating are visible through the translucent shotshell. The coating is environmentally safe and is very long-lasting in the shotshells. The sole purpose of fluorescent-coating CIC shot is to provide a portable, non-invasive and affordable field detection method for use by law enforcement officers to identify this non-magnetic shot type as approved for waterfowl and coot hunting.

ECO Pigments™, manufactured exclusively by DayGlo, Inc. (Cleveland, OH), are thermoplastic fluorescent powders free of formaldehyde, heavy metals, azo compounds, perfluorooctanoic acid, aromatic amines, regulated phthalates, bisphenol A (BPA), polyaromatic hydrocarbons, substance of very high concern (SVHC) chemicals, and California Proposition 65 chemicals. The pigments were originally developed for use as brightly colored ''markers'' to be mixed with aerially applied, fire-retardant chemicals used in forest fire suppression, because they are more ''environmentally friendly'' than even the relatively inert iron-oxide powders formerly applied. They are globally approved for a wide variety of uses, including textile dyes, paints, and toys. Environ-Metal, Inc., anticipates applying coatings approximately 0.001-inch thick, a value which is calculated to add about 0.13 percent by weight to the mass of a #4-size copper shot.

Environ-Metal, Inc., will apply the pigment to metallic shot using a proprietary process to create a thin, adherent coating of a tough, resilient, fluorescent substance. The coating is visually detectable through the wall of a shotshell when ultraviolet light is applied to the exterior of the shell. To further aid field detection, after application of the nontoxic ultraviolet (UV) pigment to CIC shot, the shot is loaded into an uncolored (''clear'') hull, with a unique inner shot wad printed with the manufacturer and shot material type.

Law enforcement officers who have reason to suspect that a non-magnetic shotshell may contain unapproved shot (*e.g.,* toxic lead) need only shine the UV light on the side of the translucent shell, which will be marked by Environ-Metal, Inc., as containing copper, to determine the presence or absence of a visible glow emitted by the shot coating.

Although the shot coating is inherently water-proof, it is further protected against environmental degradation by being sealed within two layers of polyethylene plastic—the wad and the hull or shell. Environ-Metal, Inc., has stated that ''potential fading of the thermoplastic UV dye could not become significant until after both of the enveloping polyethylene cylinders had become embrittled/cracked by excessive

exposure to direct sunlight, a condition which would essentially render the shotshell useless.''

**Positive Effects for Migratory Waterfowl Populations**

Allowing use of additional nontoxic shot types may encourage greater hunter compliance and participation with nontoxic shot requirements and discourage the use of lead shot. Furnishing additional approved nontoxic shot types and nontoxic coatings likely would further reduce the use of lead shot. Thus, approving additional nontoxic shot types and coatings would likely result in a minor positive long-term impact on waterfowl and wetland habitats.

**Unlikely Effects on Endangered and Threatened Species**

The impact on endangered and threatened species of approving corrosion-inhibited copper shot would be very small, but positive. Corrosion-inhibited copper shot is highly unlikely to adversely affect animals that consume the shot or habitats in which it might be used. We see no potential significant negative effects on endangered or threatened species due to approval of the shot type.

Further, we annually obtain a biological opinion pursuant to section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), prior to establishing the annual migratory bird hunting regulations. The migratory bird hunting regulations promulgated as a result of this annual consultation remove and alleviate chances of conflict between migratory bird hunting and endangered and threatened species.

**Beneficial Effects on Ecosystems**

Previously approved shot types have been shown in test results to be nontoxic to the migratory bird resource, and we believe that they cause no adverse impact on ecosystems. There is concern, however, about noncompliance with the prohibition on lead shot and potential ecosystem effects. The use of lead shot has a negative impact on wetland ecosystems due to the erosion of shot, causing sediment/soil and water contamination and the direct ingestion of shot by aquatic and predatory animals. Though we believe noncompliance is of concern, approval of the shot type would have little impact on the resource, except the small positive impact of reducing the rate of noncompliance.

**Cumulative Impacts**

We foresee no negative cumulative impacts if we approve this shot type for waterfowl hunting. Its approval could help to further reduce the negative impacts of the use of lead shot for hunting waterfowl and coots. We believe the impacts of the approval for waterfowl hunting in the United States should be positive.

**Public Comments**

You may submit information concerning this proposed rule or the draft environmental assessment by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we receive in response to this proposed rule will be available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 5275 Leesburg Pike, Falls Church, VA.

**Required Determinations**

*Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs*

This proposed rule is considered to be an Executive Order (E.O.) 13771 deregulatory action (82 FR 9339, February 3, 2017) because it would approve an additional type of nontoxic shot in our regulations at 50 CFR part 20.

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that OIRA will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action would not have a significant economic impact on a substantial number of small entities. The rule would allow small entities to improve their economic viability. However, the rule would not have a significant economic impact because it would affect only two companies. We certify that because this rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804 (2)).

a. This rule would not have an annual effect on the economy of $100 million or more.

b. This rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.

c. This rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule would not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Actions under the proposed rule would not affect small government activities in any significant way.

b. This rule would not produce a Federal mandate of $100 million or greater in any year. It would not be a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

*Takings*

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required. This proposed rule does not contain a provision for taking of private property.

*Federalism*

This proposed rule does not have sufficient Federalism effects to warrant preparation of a federalism summary impact assessment under E.O. 13132. It would not interfere with the ability of States to manage themselves or their funds.

*Civil Justice Reform*

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

*Paperwork Reduction Act of 1995 (PRA)*

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501 *et seq.*). OMB has approved our collection of information associated with applications for approval of nontoxic shot (50 CFR 20.134) and assigned OMB Control Number 1018–0067, which expires March 31, 2020. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

Our draft environmental assessment is part of the administrative record for this proposed rule. In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) and part 516 of the U.S. Department of the Interior Manual (516 DM), approval of corrosion-inhibited copper shot and fluoropolymer coatings would not have a significant effect on the quality of the human environment, nor would it involve unresolved conflicts concerning alternative uses of available resources. Therefore, preparation of an environmental impact statement is not required.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that there are no potential effects. This rule would not interfere with the ability of Tribes to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

*Energy Supply, Distribution, or Use (E.O. 13211)*

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule would not be a significant regulatory action under E.O. 12866, nor would it significantly affect energy supplies, distribution, or use. This action would not be a significant energy action, and no Statement of Energy Effects is required.

*Compliance With Endangered Species Act Requirements*

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). We have concluded that this proposed rule would not affect listed species.

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, please send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Proposed Regulation Promulgation**

For the reasons discussed in the preamble, we propose to amend part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations as follows:

## PART 20—MIGRATORY BIRD HUNTING

■ 1. The authority citation for part 20 continues to read as follows:

**Authority:** Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

■ 2. Amend § 20.21 paragraph (j)(1) by:

■ a. Adding a table entry for ''Corrosion-inhibited copper'', immediately following the entry for ''Copper-clad iron''; and

■ b: Revising the first table note.

The addition and revision read as follows:

**§ 20.21 What hunting methods are illegal?**

* * * * *

(j)(1) * * *

| Approved shot type * | Percent composition by weight | Field testing device ** |
|---|---|---|
| * * * * * * * | | |
| Corrosion-inhibited copper ..... | ≥99.9 copper with benzotriazole and thermoplastic coatings. | fluorescent powder Ultraviolet Light. |
| * * * * * * * | | |

* Coatings of copper, nickel, tin, zinc, zinc chloride, zinc chrome, fluoropolymers, and fluorescent thermoplastic on approved nontoxic shot types also are approved.

* * * * *

Dated: August 8, 2017.

**Todd D. Willens,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2017–17175 Filed 8–14–17; 8:45 am]

**BILLING CODE 4333–15–P**

# Notices

Federal Register
Vol. 82, No. 156
Tuesday, August 15, 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.

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Delaware Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Delaware Advisory Committee to the Commission will convene by conference call, on Monday, September 18 at 10:00 a.m. (EDT). The purpose of the meeting is to make preparations for a briefing meeting on Policing in Communities of Color and Implicit Bias in Delaware, including refining the agenda and list of the invited expert presenters. The briefing meeting is planned for November and will be held in Wilmington, DE.

**DATES:** Monday, September 18, 2017, at 10:00 a.m. (EDT).

**PUBLIC CALL–IN INFORMATION:** Conference call number: 1–888–737–3705 and conference call ID: 5272563.

**FOR FURTHER INFORMATION CONTACT:** Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

**SUPPLEMENTARY INFORMATION:** Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–888–737–3705 and conference call ID: 5272563. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and providing the operator with the toll-free conference call number:1–888–737–3705 and conference call ID: 5272563.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=240;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

### Agenda

I. Welcome and Introductions
Rollcall
II. Planning Meeting
—Discuss Project Planning
III. Other Business
IV. Adjournment

Dated: August 10, 2017.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2017–17191 Filed 8–14–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–23–2017]**

### Foreign-Trade Zone (FTZ) 203—Moses Lake, Washington; Revision to Production Authority SGL Automotive Carbon Fibers, LLC (Carbon Fiber), Moses Lake, Washington

On March 30, 2017, SGL Automotive Carbon Fibers, LLC (SGLACF), submitted a notification of proposed revision to existing production authority to the FTZ Board for its facility within FTZ 203—Site 3, in Moses Lake, Washington.

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 (82 FR 18105, April 17, 2017). On July 28, 2017, the applicant was notified of the FTZ Board's decision that no further review of the proposed revision—involving SGLACF's admission of all foreign-status status polyacrylonitrile (PAN) fiber in privileged foreign status (19 CFR 146.41)—is warranted at this time. The proposed revision described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14. For U.S. entry of carbon fiber produced in the FTZ, SGLACF will make duty payment at the polyacrylonitrile (PAN) fiber duty rate on the full value of PAN fiber introduced into the production process, including making duty payment at the PAN fiber duty rate on an estimated value of PAN fiber contained in scrap resulting from the production process (based on the actual percentage of scrap and the PAN to carbon fiber ratio from the preceding year's production).

Dated: August 9, 2017.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2017–17199 Filed 8–14–17; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–357–820 and A–560–830]**

### Biodiesel From Argentina and Indonesia: Postponement of Preliminary Determinations of Antidumping Duty Investigations

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Effective August 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** David Lindgren (Argentina) at (202) 482–3870, or Myrna Lobo (Indonesia) at (202) 482–2371, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 12, 2017, the Department of Commerce (Department) initiated antidumping duty (AD) investigations on biodiesel from Argentina and Indonesia.[1] Currently, the preliminary determinations of these investigations are due no later than August 30, 2017.

#### Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in an AD investigation within 140 days after the date on which the Department initiated the investigation. However, section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) allow the Department to postpone the preliminary determination at the request of the petitioner.

On July 6, 2017, the petitioner[2] submitted a timely request pursuant to 19 CFR 351.205(e) to postpone the preliminary determinations.[3] For the reasons stated above and because there are no compelling reasons to deny the request, the Department, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), is postponing the deadline for the preliminary determinations to no later than 190 days after the day on which the investigations were initiated. Accordingly, the Department will issue the preliminary determinations no later than October 19, 2017. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 9, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017–17197 Filed 8–14–17; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Biodiesel from Argentina and Indonesia: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 18428 (April 19, 2017).

[2] The National Biodiesel Board Fair Trade Coalition and its individual members.

[3] *See* letter from the petitioner entitled ''Biodiesel from Argentina and Indonesia: Request to Extend Deadline For Alleging Particular Market Situation and Request For Postponement Of The Preliminary Determination,'' dated July 6, 2017.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–549–834]**

### Citric Acid and Certain Citrate Salts From Thailand: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Effective August 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone 202–482–1009.

**SUPPLEMENTARY INFORMATION:**

#### Background

On June 22, 2017, the Department of Commerce (the Department) initiated the countervailing duty investigation of citric acid and certain citrate salts from Thailand.[1] Currently, the preliminary determination is due no later than August 28, 2017.[2] On August 1, 2017, in accordance with section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351 205(b)(2), the petitioners requested that the Department postpone and fully extend the deadline for the preliminary determination.[3]

#### Postponement of Due Date for Preliminary Determination

Section 703(b)(1) of 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, the Department may, at the petitioners' timely request, postpone the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation. *See* section 703(c)(1)(A) of the Act.

The petitioners' request for the Department to fully postpone the deadline for the preliminary determination was timely filed 25 days before the scheduled date of the preliminary determination, pursuant to 19 CFR 351.205(e).[4] Therefore, for the reasons stated above and because there are no compelling reasons to deny the request, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2), we are fully extending the due date for the preliminary determination to no later than 130 days after the date on which the investigation was initiated. The deadline for completion of the preliminary determination is now October 30, 2017.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: August 8, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017–17198 Filed 8–14–17; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Citric Acid and Certain Citrate Salts from Thailand: Initiation of Countervailing Duty Investigation,* 82 FR 29836, 29840 (June 30, 2017).

[2] The actual deadline is August 26, 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] The petitioners are Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC (the petitioners).

[4] *See* Petitioners' August 1, 2017, letter to the Department, ''Countervailing Duty Investigation of Citric Acid and Certain Citrate Salts from Thailand: Petitioners' Request For Postponement of the Preliminary Determination.''

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Institute of Standards and Technology.

*Title:* Manufacturing Extension Partnership (MEP) Client Impact Survey.

*OMB Control Number:* 0693–0021.

*Form Number(s):* None.

*Type of Request:* Regular.

*Number of Respondents:* 10,000.

*Average Hours per Response:* 12 minutes.

*Burden Hours:* 2,000.

*Needs and Uses:* The objective of the NIST Manufacturing Extension Partnership Program (MEP) is to enhance productivity, technological performance, and strengthen the global competitiveness of small-and medium-sized U.S.-based manufacturing firms. Through this client impact survey, the MEP will collect data necessary for program accountability; analysis and research into the effectiveness of the MEP program; reports to stakeholders; GPRA; continuous improvement efforts; knowledge sharing across the MEP system; and identification of best practices. Collection of this data is needed in order to comply with the MEP charter, as mandated by Congress.

*Affected Public:* Business or other for profit institutions.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

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.

**Sheleen Dumas,**

*Departmental PRA Lead, Office of the Chief Information Officer.*

[FR Doc. 2017–17189 Filed 8–14–17; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF600**

### Notice of Intent To Prepare an Environmental Impact Statement for the Establishment of Annual Catch Limits for the Subsistence Harvest of Bowhead Whales by Alaska Natives

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent; announcement of public scoping period; request for written comments.

**SUMMARY:** NMFS announces its intent to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA), in order to assess the impacts of issuing annual catch limits for the subsistence harvest of bowhead whales by Alaska Natives from 2019 onward. Publication of this document begins the official scoping period that will help identify issues and alternatives to be considered in the EIS.

**DATES:** Written comments on this scoping process must be received no later than September 14, 2017.

**ADDRESSES:** Submit your comments on this scoping notice, by including NOAA–NMFS–2017–0098 by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0098.* Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Carolyn Doherty, Office of International Affairs and Seafood Inspection, NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910.

*Instructions:* NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends at 11:59 p.m. eastern time on the date of comment period closure. All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. For posted comments, all personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (PDF) formats only.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Doherty, Office of International Affairs and Seafood Inspection, NOAA Fisheries (phone: 301–427–8385 or email: *Carolyn.Doherty@noaa.gov*).

**SUPPLEMENTARY INFORMATION:** NMFS is initiating this EIS process in order to comprehensively assess impacts of the subsistence harvest of Western Arctic bowhead whales by Alaska Natives from 2019 onward.

#### Background

Alaska Natives have hunted bowhead whales for over 2,000 years as the whales migrate in the spring and fall along the coast of Alaska. Their traditional subsistence hunts for these whales have been regulated by catch limits and other limitations under the authority of the International Whaling Commission (IWC) since 1977. Alaska Native subsistence hunters from 11 northern Alaskan communities take less than 1 percent of the stock of bowhead whales per year. Since 1977, the number of whales struck by harpoons has ranged between 14 and 72 animals per year, depending in part on changes in IWC management strategy due to higher estimates of both bowhead whale abundance and increased hunter efficiency in recent years. The IWC sets an overall aboriginal subsistence catch limit for this stock, based on the request of IWC member countries on behalf of the aboriginal hunters. The IWC's catch limit for bowhead whales includes a limit on the number of landed whales and a limit on the number of whales that may be struck. In the case of Alaska and Russian Native subsistence hunts, the United States and the Russian Federation make a joint request to the IWC for subsistence catch limits for bowhead whales.

NMFS must annually publish a notice of aboriginal subsistence whale hunting catch limits and any other limitations on such hunting in the **Federal Register** (50 CFR 230.6). The subsistence hunt is directly managed by the Alaska Eskimo Whaling Commission (AEWC) and the catch limits are issued through annual amendments to a cooperative agreement between the AEWC and NOAA, consistent with the mandates codified in the Whaling Convention Act, 16 U.S.C. 916–916l.

In order to comprehensively assess the effects of these annual removals, this proposed action would extend from 2019 onward, subject to IWC-set catch

limits. IWC-set catch limits are, in turn, based on IWC Scientific Committee advice on the sustainability of proposed catch limits using a population model, referred to as a Strike Limit Algorithm. The Strike Limit Algorithm used by the IWC is specific to this population of bowhead whales and is the IWC's formula for calculating sustainable aboriginal subsistence whaling removal levels, based on the size and productivity of a whale population, in order to satisfy subsistence need. The Strike Limit Algorithm also allows for an inter-annual variation of strikes up to 50 percent of the annual strike limit in order to provide flexibility for the hunt while meeting the Commission's conservation objectives.

**Alternatives**

NMFS preliminarily anticipates four alternatives:

*Alternative 1 (no action):* Do not grant the AEWC a catch limit.

*Alternative 2:* Grant the AEWC an annual strike limit of 67 bowhead whales, not to exceed a total of 336 landed whales over any 6-year period, with no unused strikes from previous years added to a subsequent annual limit.

*Alternative 3:* Grant the AEWC an annual strike limit of 67 bowhead whales, not to exceed a total of 336 landed whales over any 6-year period, with unused strikes from previous years carried forward and added to the annual strike limit of subsequent years (subject to limits), provided that no more than 15 additional strikes are added to any one year's allocation of strikes. This alternative would maintain the *status quo* for any six-year period with respect to management of the hunt.

*Alternative 4:* Grant the AEWC an annual strike limit of 67 bowhead whales, not to exceed a total take of 336 landed whales over any 6-year period, with unused strikes from previous years carried forward and added to the annual strike quota of subsequent years (subject to limits), provided that no more than 50 percent of the annual strike limit is added for any one year. This would maintain the *status quo* for any 6-year period with respect to management of the hunt for landed whales and employ the Commission's 50 percent carryover principle.

NOAA prepared an EIS in 2013 that analyzed issuing annual strike limits to the AEWC for a subsistence hunt on bowhead whales from 2013 through 2018. That analysis concluded that the overall effects of human activities associated with subsistence whaling results in only minor impacts on the western Arctic bowhead whale stock. In light of the stability of the IWC subsistence harvest allocations and the subsistence bowhead harvests by Alaska Natives, the 2013 EIS estimated environmental consequences for a 25- or 30-year period, recognizing that every 5 or 6 years, when new catch limits are considered by the IWC, NMFS would prepare an Environmental Assessment (EA) to determine whether any new circumstances would result in significant environmental impacts warranting a new EIS.

NMFS decided to prepare an EIS rather than an EA in order to assess the impacts of issuing annual quotas for the subsistence hunt by Alaska Natives from 2019 onward. This decision was not based on any new determination that significant effects occur as a result of the bowhead subsistence hunt, but rather to take advantage of the greater transparency and public involvement in decision-making afforded through an EIS process.

Major issues to be addressed in this EIS include: The impact of subsistence removal of bowhead whales from the Western Arctic stock of bowhead whales; the impacts of these harvest levels on the traditional and cultural values of Alaska Natives, and the cumulative effects of the action when considered along with environmental conditions and past, present, and future actions potentially affecting bowhead whales.

**Public Comment**

We begin this NEPA process by soliciting input from the public and interested parties on the type of impacts to be considered in the EIS, the range of alternatives to be assessed, and any other pertinent information. Specifically, this scoping process is intended to accomplish the following objectives:

1. Invite affected Federal, state, and local agencies, Alaska Natives, and other interested persons to participate in the EIS process.
2. Determine the potential significant environmental issues to be analyzed in the EIS.
3. Identify and eliminate issues determined to be insignificant or addressed in other documents.
4. Allocate assignments among the lead agency and cooperating agencies regarding preparation of the EIS, including impact analysis and identification of mitigation measures.
5. Identify related environmental documents being prepared.
6. Identify other environmental review and consultation requirements.

The official scoping period is from August 15, 2017, until September 14, 2017. Please visit the NOAA Fisheries' Alaska Regional Office's Web page at *https://alaskafisheries.noaa.gov/pr/whales-bowhead* for more information on this EIS. NMFS estimates the draft EIS for 2019 onward will be available in May 2018.

**Authority**

The preparation of the EIS for the subsistence harvest of Western Arctic bowhead whales by Alaska Natives will be conducted under the authority and in accordance with the requirements of NEPA, Council on Environmental Quality Regulations (40 CFR parts 1500–1508), other applicable Federal laws and regulations, and policies and procedures of NMFS for compliance with those regulations.

Dated: August 9, 2017.

**John Henderschedt,**

*Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.*

[FR Doc. 2017–17173 Filed 8–14–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 170718681–7735–01]**

**RIN 0648–XF575**

### Endangered and Threatened Species; Initiation of a Status Review for Alewife and Blueback Herring Under the Endangered Species Act (ESA)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of initiation of a status review; request for information.

**SUMMARY:** We, NMFS, announce the initiation of a new status review of alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*) to determine whether listing either species as endangered or threatened under the Endangered Species Act is warranted. A comprehensive status review must be based on the best scientific and commercial data available at the time of the review. Therefore, we are asking the public to provide such information on alewife and blueback herring that has become available since the listing determination in 2013.

**DATES:** To allow us adequate time to conduct this review, we must receive your information no later than October 16, 2017.

**ADDRESSES:** You may submit information for us to use in our status review, identifying it as ''Alewife and Blueback Herring Status Review (NOAA–NMFS–2017–0094),'' by either of the following methods:

• *Federal eRulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=[NOAA-NMFS-2017-0094*], click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.

• *Mail or hand-delivery:* Submit written comments to Tara Trinko Lake, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, Massachusetts 01930.

*Instructions:* Information sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All information received is a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Tara Trinko Lake at the above address, by phone at 978–282–8477 or *tara.trinko@noaa.gov,* David Gouveia, 978–281–9280 or *david.gouveia@noaa.gov,* or Marta Nammack, 301–427–8469 or *marta.nammack@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** This notice announces our active review of alewife and blueback herring. On August 12, 2013, we determined that listing alewife and blueback herring as threatened or endangered under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) was not warranted (78 FR 48943). However, at that time, we committed to revisiting the status of both species in 3 to 5 years. The 3- to 5-year timeframe equated to approximately one generation time for these species, and allowed for time to complete ongoing scientific studies, including a river herring stock assessment update that was completed by the Atlantic States Marine Fisheries Commission in August 2017.

The Natural Resources Defense Council and Earthjustice (the Plaintiffs) filed suit against us on February 10, 2015, in the U.S. District Court in Washington, DC, challenging our decision not to list blueback herring as threatened or endangered. The Plaintiffs also challenged our determination that the Mid-Atlantic stock complex of blueback herring is not a distinct population segment (DPS). On March 25, 2017, the court vacated the blueback herring listing determination and remanded the listing determination to us. As part of a negotiated agreement with the Plaintiffs, we committed to publish a revised listing determination for blueback herring no later than January 31, 2019. We also agreed to conduct a new status review and publish in the **Federal Register** a notice of the status review, soliciting new information.

Background information about both species, including the 2013 listing determination, is available on the NMFS Greater Atlantic Regional Fisheries Office Web site: *https://www.greateratlantic.fisheries.noaa.gov/protected/pcp/soc/river_herring.html.*

## Determining if a Species Is Threatened or Endangered

Paragraph (a)(1) of section 4 of the ESA (16 U.S.C. 1533) requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Paragraph (b) of ESA section 4 requires that our determination be made on the basis of the best scientific and commercial data available after taking into account those efforts, if any, being made by any State or foreign nation, to protect such species.

## Application of the Distinct Population Segment Policy

In the application of the DPS policy, we are responsible for determining whether species, subspecies, or DPSs of marine and anadromous species are threatened or endangered under the ESA. If we are petitioned to list populations of a vertebrate species as DPSs, or if we determine that identifying DPSs may result in a conservation benefit to the species, we use the joint U.S. Fish and Wildlife Service-NMFS DPS policy (61 FR 4722; February 7, 1996) to determine whether any populations of the species meet the DPS policy criteria. Under this policy, in order to be considered a DPS, a population must be discrete from other conspecific populations, and it must be significant to the taxon to which it belongs. A group of organisms is discrete if physical, physiological, ecological or behavioral factors make it markedly separate from other populations of the same taxon. Under the DPS policy, if a population group is determined to be discrete, the agency may then consider whether it is significant to the taxon to which it belongs. Considerations in evaluating the significance of a discrete population include: (1) Persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere outside its historical geographic range; or (4) evidence that the discrete population has marked genetic differences from other populations of the species.

## Public Solicitation of New Information

With this notice, we commence a status review of alewife and blueback herring to determine whether listing the species as endangered or threatened under the ESA is warranted. To ensure that our review of alewife and blueback herring is informed by the best available scientific and commercial information, we are opening a 60-day public comment period to solicit information to support our status review.

For the status review to be complete and based on the best available scientific and commercial information, we request information on these species from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on: (1) Species abundance; (2) species productivity; (3) species distribution or population spatial structure; (4) patterns of phenotypic, genotypic, and life history diversity; (5) habitat conditions and associated limiting factors and threats; (6) ongoing or planned efforts to protect and restore the species and their habitats; (7) the adequacy of existing regulatory mechanisms and whether protections are being implemented and are proving effective in conserving the species; (8) data concerning the status and trends of identified limiting factors or threats; (9) information concerning the impacts of environmental variability and climate change on survival, recruitment, distribution, and/or extinction risk; and (10) other new information, data, or corrections including, but not limited to, taxonomic or nomenclature changes, identification of erroneous information in the previous listing determination, and improved

analytical methods for evaluating extinction risk.

In addition to the above requested information, we are interested in any information concerning protective efforts that have not yet been fully implemented or demonstrated as effective. Our consideration of conservation measures, regulatory mechanisms, and other protective efforts will be guided by the Services ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (PECE Policy) (68 FR 15100; March 28, 2003). The PECE established criteria to ensure the consistent and adequate evaluation of formalized conservation efforts when making listing decisions under the ESA. This policy may also guide the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary. Under the PECE the adequacy of conservation efforts is evaluated in terms of the certainty of their implementation, and the certainty of their effectiveness. Criteria for evaluating the certainty of implementation include whether: The necessary resources are available; the necessary authority is in place; an agreement is formalized (*i.e.,* regulatory and procedural mechanisms are in place); there is a schedule for completion and evaluation; for voluntary measures, incentives to ensure necessary participation are in place; and there is agreement of all necessary parties to the measure or plan. Criteria for evaluating the certainty of effectiveness include whether the measure or plan: Includes a clear description of the factors for decline to be addressed and how they will be reduced; establishes specific conservation objectives; identifies necessary steps to reduce threats; includes quantifiable performance measures for monitoring compliance and effectiveness; employs principles of adaptive management; and is certain to improve the species' status at the time of listing determination. We request that any information submitted with respect to conservation measures, regulatory mechanisms, or other protective efforts that have yet to be implemented or show effectiveness explicitly address these criteria in the PECE.

If you wish to provide your information for this status review, you may submit your information and materials electronically via email (see **ADDRESSES** section). We request that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16. U.S.C. 1531 *et seq.*).

Dated: August 10, 2017.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2017–17218 Filed 8–14–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Record of Decision for the Final Environmental Impact Statement for the Disposal and Reuse of Surplus Property at Naval Station Newport, Rhode Island

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Navy (Navy), after carefully weighing the environmental consequences of the proposed action, announces its decision to implement Alternative 1, the Navy's preferred alternative as described in the Final Environmental Impact Statement (EIS) for the Disposal and Reuse of Surplus Property at Naval Station (NAVSTA) Newport, Rhode Island. This decision will make 158 acres of former NAVSTA Newport property available to the local communities of Aquidneck Island for economic redevelopment.

**SUPPLEMENTARY INFORMATION:** Disposal and reuse under the chosen alternative is consistent with the Aquidneck Island Reuse Planning Authority's ''Redevelopment Plan for Surplus Properties at NAVSTA Newport'' (Redevelopment Plan) and Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, as amended in 2005 (BRAC Law). The complete text of the Record of Decision (ROD) is available for public viewing on the project Web site at *https://www.BRACPMO.Navy.mil* along with the Final EIS and supporting documents. Single copies of the ROD will be made available upon request by contacting: Mr. Gregory Preston, BRAC Program Management Office East, 4911 South Broad Street, Building 679, Philadelphia, PA 19112–1303, telephone 215–897–4900, facsimile 215–897–4902, email *gregory.preston@navy.mil.*

Dated: August 7, 2017.

**A.M. Nichols,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2017–17140 Filed 8–14–17; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Redesignation of the Environmental Impact Statement To Transition FA–18C Strike Fighter Squadrons to FA–18E Strike Fighter Squadrons at Naval Air Station Oceana, Virginia, as an Environmental Assessment and Announcement of Public Meetings

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The Department of Navy's (DoN) intent to prepare an Environmental Impact Statement (EIS) for the transition of the remaining F/A–18A/C/D (Hornet) aircraft, based at Naval Air Station (NAS) Oceana, to the F/A–18E/F (Super Hornet), published in the **Federal Register** on September 10, 2015 (80 FR 175), is hereby modified. The DoN is redesignating the EIS as an Environmental Assessment (EA). The DoN will hold public meetings on August 29 and 30, 2017, to inform the public and answer questions about the Draft EA and the proposed action as well as provide opportunities for the public to comment on the Draft EA.

**SUPPLEMENTARY INFORMATION:** Pursuant to the National Environmental Policy Act of 1969 and regulations implemented by the Council on Environmental Quality, the DoN published a Notice of Intent to prepare an EIS to transition Hornet aircraft to Super Hornet aircraft at NAS Oceana on September 10, 2015, in the **Federal Register** (80 FR 175). The majority of aircraft based at NAS Oceana transitioned to Super Hornet over a decade ago (as part of a separate proposed action), and are currently conducting flight training operations at NAS Oceana and Naval Auxiliary Landing Field (NALF) Fentress. The purpose of transitioning the remaining Hornet aircraft to Super Hornet aircraft is to provide newer, more capable, and more reliable aircraft to the NAS Oceana-based strike fighter community, which are needed to support the Navy's national defense requirements under Title 10 U.S. Code Section 5062.

During the development of the EIS, the DoN's analysis showed no

significant environmental impacts. This is because Super Hornet flight training is nearly identical to Hornet flight training. Consequently, there would be little to no change to the type and quantity of flight training operations at NAS Oceana and NALF Fentress as a result of the transition. The analysis also showed there would be only minor noise increases in a few areas; however, no increases would be greater than 1.6 decibels (dB) Day-Night Average Sound Level (DNL). A 3 dB DNL or less change in noise levels is barely perceptible to the human ear. No significant environmental impacts were identified for the other resources analyzed in the EA, including air quality, public health and safety, environmental justice, land use, biological resources, and cultural resources. Accordingly, the DoN announces to public the redesignation of the EIS as an EA for this action.

With this redesignation of the EIS as an EA, the DoN is initiating a 30-day public review and comment period on the Draft EA beginning on August 16, 2017 and ending on September 15, 2017. The Draft EA is available at the following link: *http://www.oceanastrikefighter.com.* A printed copy and an electronic copy of the Draft EA have also been placed in the following libraries:

1. Great Neck Area Library, 1251 Bayne Drive, Virginia Beach, Virginia 23454.
2. Meyera E. Oberndorf Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia 23452.
3. Oceanfront Area Library, 700 Virginia Beach Boulevard, Virginia Beach, Virginia 23451.
4. Princess Ann Area Library, 1444 Nimmo Parkway, Virginia Beach, Virginia 23456.
5. Wahab Public Law Library, 2425 Nimmo Parkway, Judicial Center, Bldg 10B, Virginia Beach, Virginia 23456.
6. Windsor Wood Area Library, 3612 South Plaza Trail, Virginia Beach, Virginia 23452.
7. Chesapeake Central Library, 298 Cedar Road, Chesapeake, Virginia 23322.
8. Greenbrier Library, 1214 Volvo Parkway, Chesapeake, Virginia 23320.

The DoN will hold public meetings to inform the public and answer questions about the Draft EA and the proposed action as well as provide opportunities for the public to comment on the Draft EA. Federal, state, and local agencies and officials, Native American Indian Tribes and Nations, and interested organizations and individuals are encouraged to provide comments in person at the public meetings or in writing during the 30-day public review period. Two public meetings will be held from 5:00 p.m. to 7:00 p.m. on:

1. Tuesday, August 29, 2017, at the Columbian Club, 1236 Prosperity Road, Virginia Beach, Virginia 23451.

2. Wednesday, August 30, 2017, at the Hickory Ruritan Club, 2752 Battlefield Boulevard South, Chesapeake, Virginia 23322.

The public meetings will be open house sessions with informational poster stations. Members of the public will have the opportunity to ask questions of DoN representatives and subject matter experts. Attendees will also be able to provide verbal comments to a stenographer or submit written comments during the public meetings. In addition to participating in the public meetings, members of the public may submit comments via the U.S. Postal Service using the mailing address identified in the contact information later in this notice or electronically using the project Web site (*http://www.oceanastrikefighter.com*). All comments made at the public meetings, or postmarked or received online by September 15, 2017, will become part of the public record and be considered in the Final EA.

The DoN may release the city, state, and 5-digit zip code of individuals who provide comments during the Draft EA public review and comment period. However, the names, street addresses, email addresses and screen names, telephone numbers, or other personally identifiable information of those individuals will not be released by the DoN unless required by law. Prior to each commenter making verbal comments to the stenographer at the public meetings the commenter will be asked whether he or she agrees to a release of their personally identifiable information. Those commenters submitting written comments, either using comment forms or via the project Web site, will be asked whether they authorize release of personally identifiable information by checking a ''release'' box.

**FOR FURTHER INFORMATION CONTACT:** NAS Oceana Strike Fighter Transition EA Project Manager (Code EV21/TW); Naval Facilities Engineering Command Atlantic, 6506 Hampton Boulevard, Norfolk, Virginia 23508.

Dated: August 7, 2017.

**A.M. Nichols,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2017–17142 Filed 8–14–17; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### 2025 Power Marketing Plan

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of final plan.

**SUMMARY:** The Department of Energy (DOE), Western Area Power Administration (WAPA), announces its final 2025 Power Marketing Plan (Marketing Plan) for the Sierra Nevada Region (SNR). On December 31, 2024, all of SNR's long-term power sales contracts will expire. This notice responds to comments received on the Proposed 2025 Power Marketing Plan (Proposed Plan) and sets forth the Marketing Plan. The Marketing Plan specifies the terms and conditions under which WAPA will market power from the Central Valley Project (CVP) and the Washoe Project beginning January 1, 2025. This Marketing Plan supersedes all previous marketing plans for these projects. WAPA will offer new contracts for the sale of power to existing customers as more fully described in the Marketing Plan. Entities who wish to apply for a new allocation of power from WAPA, and who meet the criteria defined in the Marketing Plan, should submit formal applications. Application procedures will be set forth in the Call for 2025 Resource Pool Applications in a separate **Federal Register** notice to be published after the Marketing Plan is applicable.

**DATES:** The Marketing Plan will become applicable September 14, 2017 in order to make power allocations and complete the other processes necessary to begin providing services on January 1, 2025.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sonja Anderson, Vice President of Power Marketing, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA, 95630–4710, by email at *sanderso@wapa.gov,* or by telephone (916) 353–4421. Information on development of the Marketing Plan can be found at *https://www.wapa.gov/regions/SN/PowerMarketing/Pages/2025-Program.aspx.*

**SUPPLEMENTARY INFORMATION:**

#### Development of the 2025 Power Marketing Plan

WAPA currently markets power from the CVP and the Washoe Project under long-term contracts to approximately 80 preference customers in northern and central California and Nevada. On December 31, 2024, all of SNR's long-

term power sales contracts will expire. This notice sets forth WAPA's Marketing Plan and responds to comments received on the Proposed Plan. The Marketing Plan specifies the terms and conditions under which WAPA will market power from CVP and the Washoe Project beginning January 1, 2025. This Marketing Plan supersedes all previous marketing plans for these projects.

CVP power facilities include 11 powerplants with a maximum operating capability of about 2,113 megawatts (MW) and an estimated average annual generation of 4.6 million megawatthours (MWh). The Washoe Project, Stampede Powerplant has a maximum operating capability of 3.65 MW with an estimated annual generation of 10,000 MWh.

To deliver CVP power, WAPA owns the 94 circuit-mile Malin-Round Mountain 500-kilovolt (kV) transmission line (an integral part of the Pacific AC Intertie (PACI)), the 84 circuit-mile Los Banos-Gates No. 3 500-kV transmission line, 803 circuit miles of 230-kV transmission line, 7 circuit miles of 115-kV transmission line, and approximately 63 circuit miles of 69-kV and below transmission line. WAPA also has partial ownership in the 342-mile California-Oregon Transmission Project (COTP) 500-kV transmission line. Many of WAPA's existing customers have no direct access to WAPA's transmission lines and receive service over transmission lines owned by other utilities. The Washoe Project is not directly connected to the CVP. Sierra Pacific Power Company (SPPC) owns and operates the only transmission system available for access to the Washoe Project.

The following table lists a range of estimated CVP and Washoe Project power resources and adjustments. This table is for informational purposes only and does not imply the power resources and adjustments shown will be the actual amounts available or adjustments applied.

Estimated CVP power resources and adjustments prior to first preference entitlements and base resource allocations

| Power resources/adjustment | Range/value |
|---|---|
| Annual energy generation | 2,400,000–8,600,000 MWh. |
| Monthly energy generation | 87,000–1,100,000 MWh. |
| Monthly capacity | 360–1,900 MW. |
| Annual project use | 334,000 MWh–1,670,000 MWh. |
| Monthly project use | 10,000–180,000 MWh. |
| Monthly project use (on peak) | 30–360 MW. |
| Monthly maintenance | 0–300 MW. |
| Reserves—hydro | minimum 5% of monthly capacity. |
| CVP transmission and transformation losses from the generator bus to a 230–kV load bus | 1.6%. |

WAPA began developing the Marketing Plan with a series of three informal public information meetings. These meetings helped WAPA identify pertinent issues, including contract provisions and methodologies for creating resource pools.

WAPA subsequently published its Proposed Plan (81 FR 27433, dated May 6, 2016). WAPA held a public information forum on June 1, 2016, to present the Proposed Plan and answer questions. On July 12, 2016, WAPA held a public comment forum to accept verbal comments, and accepted written comments from the public through August 4, 2016. WAPA considered the comments received in developing the Marketing Plan.

**Responses to Comments Received on the Notice of Proposed Plan**

During the public consultation and comment period, WAPA received 13 letters commenting on the Proposed Plan. In addition, six customers and interested stakeholder representatives commented during the July 12, 2016, public comment forum. In preparing the Marketing Plan, WAPA reviewed and considered all comments received during the public consultation and comment period.

The following is a summary of the comments received during the consultation and comment period, and WAPA's responses to those comments. Comments are grouped by subject and paraphrased for brevity. Specific comments are used for clarification where necessary.

*I. Marketing Plan Term*

*Comment:* All commenters supported the 30-year term; however, several stated without some additional balancing of the termination provisions and/or the rate procedures, the additional term could result in cost or risk exposure that negatively impacts Base Resource customers. Additionally, Base Resource customers will be exposed to increased risks due to the take-or-pay nature of the power contracts unless WAPA includes reduction and early termination provisions.

*Response:* Please see WAPA's response under Termination and Reduction Provisions for a response to the reduction and early termination portion of these comments.

*II. Marketable Resource—Base Resource*

*Comment:* Two commenters stated WAPA should explicitly define the Base Resource and list all applicable attributes including energy, capacity, ancillary services, reserves, transmission and environmental attributes.

*Response:* WAPA has modified the definition of Base Resource in the Marketing Plan to clarify that power includes capacity and energy. Transmission is not an attribute of the Base Resource. It is the customers' responsibility to secure any necessary transmission service; however, WAPA will provide transmission service to deliver the Base Resource on the CVP system. The definition continues to include ancillary services reserves, and environmental attributes.

*Comment:* A commenter stated it understands that Project Use, First Preference, maintenance, reserves, and system and transmission losses are subtracted from the CVP generation prior to determining the Base Resource available. The commenter asked if there were any other existing or new obligations on the CVP resource that should be explicitly identified in the Marketing Plan.

*Response:* At this time, there are no additional obligations on CVP power resources other than those listed.

*Comment:* A commenter stated WAPA should determine the amount of Base Resource available in an equitable manner, and not by which balancing authority area the customers are located. WAPA can improve the equity by considering all aspects of its CVP portfolio of assets, including generation,

capacity, ancillaries, and transmission assets.

*Response:* The Marketing Plan defines Base Resource and allocates Base Resource to each preference customer based on the preference customer's percentage. WAPA does not consider a customer's balancing authority area when determining the amount of Base Resource available.

*Comment:* A commenter encouraged greater efforts by WAPA and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) to consider measures to increase the value and flexibility of the Base Resource.

*Response:* WAPA will continue to work with Reclamation to maximize the value of the Base Resource.

*III. Marketable Resource—Custom Products*

*Comment:* Several commenters supported offering Custom Products. The commenters stated that WAPA's commitment to explore requested Custom Products provides needed certainty and possible additional opportunities for customers to explore new uses for the Base Resource and transmission assets. The commenters further stated that WAPA's process for establishing Custom Products involves appropriate customer input, and ensures that WAPA's other customers may even benefit indirectly from the offering of Custom Products. The commenters also stated that Custom Products improve the value of the Base Resource to all customers. The customers support all costs incurred being paid by those customers contracting for such Custom Products.

*Response:* WAPA will continue to offer Custom Products with all costs incurred paid by those customers contracting for those products and/or services.

*Comment:* A commenter encouraged WAPA to identify the Custom Products being offered to customers, including the product terms and cost, and to increase the visibility and availability of the price and terms and conditions of Custom Products. The commenter suggested that WAPA provide periodic reports on the Custom Products used by preference customers, including data on prices, terms, and conditions for all products.

*Response:* WAPA anticipates it will continue to offer Full Load, Variable Resource, and Scheduling Coordinator Services. WAPA is open to assisting customers with their electric service needs under a Custom Product contract if WAPA is able to do so. Custom Products will initially be offered for 5-year terms. The cost for such products and services will be on a pass-through basis. WAPA will not know what other products or services it may provide until those services are requested, nor will WAPA know the cost of any Custom Products until those services are determined, along with the number of customers participating in those services, and other relevant parameters. At such time as the pricing, terms and conditions related to Custom Products is no longer considered proprietary and/or market sensitive, WAPA may provide it upon request.

*Comment:* A commenter asked WAPA to clarify how it will carry out the collaborative process to ensure all stakeholder perspectives are considered.

*Response:* Custom Products are any product or service requested by an individual customer or group of customers. These products or services will be mutually negotiated between a specific customer or a specific group of customers and WAPA.

*Comment:* A commenter stated that, to the extent the Custom Products offered reduce the value of the Base Resource to other preference customers by reducing the availability of electricity, capacity, reserves, ancillary services, transmission and/or environmental attributes, the beneficiary should pay for the value of the displaced Base Resource. WAPA should modify the Marketing Plan to clearly define the Custom Products that could reduce power and transmission available for Base Resource generation before all customers are asked to execute a contract in 2020.

*Response:* Custom Products do not include the Base Resource or CVP generation. Custom Products are meant to enhance the Base Resource for those customers that may need additional services from WAPA to maximize the benefit from the Base Resource. WAPA provides transmission with the Base Resource; therefore, Custom Products do not affect the availability of transmission for Base Resource delivery.

*Comment:* If WAPA is providing a service or facility for voltage support or some similar benefit to a specific entity, according to WAPA's Open Access Transmission Tariff (OATT), the costs for such a project must be paid by that individual entity. If WAPA does not follow its own OATT and allocates these costs to other entities, these other entities must be authorized an off-ramp.

*Response:* All costs associated with providing Custom Products are passed to those customers requesting Custom Products. If a Custom Product involves services under WAPA's OATT, the customer will take and pay for those services under the OATT.

*IV. Exchange Program*

*Comment:* A commenter supported the hourly and seasonal exchange programs provided that they are administered and implemented fairly whereby all who can share in the benefits of Base Resource can do so without taking on additional burdens.

*Response:* WAPA intends to develop the exchange program with input from the customers and the public to maximize the benefits and lessen any burdens associated with exchange program participation. The exchange program is an optional program.

*V. Extension of the Resource*

*Comment:* Several commenters support extending 98 percent of the Base Resource to existing customers.

*Response:* WAPA will extend 98 percent of the Base Resource to existing customers as specified in the Marketing Plan.

*Comment:* A commenter stated WAPA should allow existing customers to take less than 98 percent of their current Base Resource percentage.

*Response:* WAPA will allow an existing customer to reduce its base resource percentage allocation under this Marketing Plan with at least six months' written notice to WAPA prior to January 1, 2025.

*Comment:* A commenter supported limiting allocations to no more than 100 percent of load, but suggested using consistent data to determine load between existing and new customers.

*Response:* A customer should not have an allocation larger than its load. Reviewing a 5-year period of energy consumption for existing customers is appropriate so an existing customer is not unduly harmed due to unusual factors (drought, environmental impacts, etc.) that may affect their load for just one year.

*VI. Resource Pools*

*Comment:* Several commenters support creating the resource pools; the calculation methodology to create the resource pools; and the 2 and 1 percent resource pools in 2025 and 2040, respectively, which are sufficient to broaden the preference customer base without overly penalizing existing customers.

*Response:* WAPA acknowledges the comment.

*Comment:* Two commenters stated the Marketing Plan should have a provision to address how WAPA will manage returned allocations from customers that either do not opt for new power contracts or exercise early termination. A commenter recommends that

surrendered or excess allocations (where load exceeds allocations) be offered to existing customers on a *pro rata* basis. Another commenter supports returning all surrendered allocations to existing customers, even if that amount is beyond 2 percent.

*Response:* The Marketing Plan states that surrendered allocations will be returned to existing customers on a *pro rata* basis, up to 100 percent of each existing customer's pre-2025 allocations. WAPA will not allocate Base Resource above an existing customer's pre-2025 allocation unless that existing customer applies for an additional allocation because some existing customers may neither need nor want more Base Resource. Any Base Resource available after returning existing customers to 100 percent of their pre-2025 allocations will be included in the resource pool. Any Base Resource available from excess allocations, which WAPA believes will be minimal, will also be included in the resource pool. Existing customers interested in receiving additional Base Resource are encouraged to apply for a resource pool allocation. This same process will be used for the 2040 resource pool.

*VII. Allocation Criteria*

*Comment:* A commenter stated the Northern California Power Agency members with small allocations due to prior withdrawals should receive at least equal consideration with Native American tribes.

*Response:* WAPA will consider all applications received in response to the Calls for Applications. It is WAPA's policy to provide assistance to Native American tribes consistent with 25 U.S.C. 3505.

*Comment:* A commenter stated that under the Proposed Plan, a new customer could potentially receive up to 2 percent of the Base Resource in 2025 if additional customers are not available to split the resource pool. The commenter stated that if there are not enough new customers to fully subscribe to the 2 percent offering, the remaining share of the Base Resource product that is not allocated to a new customer can then be distributed to existing customers. The commenter also stated that existing customers could still potentially receive less than 1 percent of the Base Resource if several existing customers sign up to receive a share of unsubscribed Base Resource in the resource pool for new customers.

*Response:* WAPA has not determined how much Base Resource will be allocated to any allottee or group of allottees, which would include new allottees or increases in existing customers' allocations. Existing customers may apply for additional Base Resource.

*Comment:* A commenter said the allocation methodology states the allocation of Base Resource ''will be based on applicant's load during the calendar year prior to the Call for Applications or the amount requested, whichever is less.'' The commenter advocated establishing this load ratio share benchmark to determine which existing customers' Base Resource allocations exceed their load ratio share and subjecting only those excess allocations to the 2 percent reduction to establish the resource pool. Those existing customers whose Base Resource allocations fall below the benchmark would not be subject to the 2 percent reduction and would also be eligible for participation in the resource pool.

*Response:* WAPA considered several different methodologies to create the Resource Pools, including reducing only a subset of existing customers' allocations. After reviewing the comments received during informal stakeholder meetings, WAPA determined it would treat all customers equally by reducing the existing customers' allocation by 2 percent and 1 percent to create the 2025 and 2040 Resource Pools, respectively.

*Comment:* A commenter strongly encouraged development of minimum threshold criteria to ensure that the existing customers are not disadvantaged by the resource pool and that the resource value is not weakened or jeopardized by new customers. The commenter encouraged setting standards or carefully monitoring the resource pool process to ensure the resource is being used consistent with the project purposes.

*Response:* The Marketing Plan sets forth the eligibility criteria necessary to be met to qualify for an allocation of Federal power. The criteria apply to both existing and new customers. All new and existing customers will execute the same electric service contract and are bound by the same terms and conditions.

*Comment:* A commenter was concerned by the proposal to allow only those customers who have a load ratio share below 25 percent to receive additional allocations under the resource pool. The commenter understands the intent to avoid allocating additional Base Resource to entities who already have large allocations; however, the commenter stated the 25 percent threshold is somewhat arbitrary and that a set threshold neglects consideration of customers' socio-economic conditions or technical issues.

*Response:* In an informal public information meeting, WAPA proposed only existing customers whose allocation meets less than 25 percent of their load could apply for an additional allocation of Base Resource. Several stakeholders stated concerns with that proposal. Based on those concerns, the Marketing Plan does not contain a threshold. Any existing customer can apply for a resource pool allocation.

*VIII. General Criteria and Contract Principles*

*Comment:* Section V.B. states that ''Allocation percentages are subject to adjustment.'' A commenter stated the circumstances of such an adjustment need to be specified so customers have an understanding of the nature of their commitment to an allocation. WAPA should clarify that Base Resource percentage adjustments will only be made in very limited circumstances, such as by customer termination or reduction, or when a customer no longer exists.

*Response:* WAPA agrees there are limited circumstances when Base Resource percentages may be adjusted as defined by the Marketing Plan. For instance, existing customers' Base Resource percentages may be increased if one or more existing customers reduce their Base Resource percentage or terminate their contracts prior to 2025. All customers' Base Resource percentages will be reduced for the 2040 Resource Pool. If it is determined that a customer has too large of an allocation, or is using the Base Resource for purposes other than serving its own load, that customer's Base Resource percentage may be reduced or withdrawn. An assignment, or withdrawal of an assignment, also would cause an adjustment in a customer's Base Resource percentage.

*Comment:* Section V.I. states ''Contracts will include clauses specifying criteria that customers must meet on a continuous basis to be eligible to receive electric service from WAPA.'' Two commenters stated if WAPA intends to include criteria in the contracts that differ from the criteria for eligibility for an allocation, then the nature of the intended ongoing criteria should be explained. WAPA should clarify the criteria a customer must continue to meet to remain a customer.

*Response:* The eligibility criteria listed in the Marketing Plan will remain during the term of the Marketing Plan. However, other criteria may be required during the 30-year term to maintain flexibility and adapt to changes. Criteria

that a customer may need to meet will be included in contracts which can be modified as necessary to correspond with changes in the electric utility industry.

*Comment:* A commenter asked what version of the General Power Contract Provisions (GPCP) will be attached to the new contracts.

*Response:* The GPCP in effect at the time of the contract offer will be attached to the contracts for electric service.

*IX. Termination/Reduction*

*Comment:* Several commenters expressed interest in contract termination/Base Resource reduction. Commenters stated that to achieve balance for a 30-year take-or-pay obligation, the contract should include a reasonable termination or reduction provision. Commenters asserted that precedent for contract termination provisions within contracts has been set by Federal Energy Regulatory Commission (FERC)-approved transmission contracts. Due to the vague language in the GPCP, commenters stated that the Marketing Plan should clearly articulate customers' ability to terminate or reduce their Base Resource percentages when rates are extended. Commenters asserted that the Marketing Plan should clarify a customer's ability to terminate its contract under the GPCP. While the current GPCP provide for any customer, during a 90-day notification window, to terminate a contract following a rate change or formula rate extension, commenters recommended that a clear termination or allocation reduction provision be included in the body of the new agreement. Commenters asserted that there is clear precedent in major WAPA agreements for a reasonable termination notice provision. Commenters stated that specific language should be included in the body of the power contracts to allow a customer to reduce or terminate its allocation upon notice to WAPA, because GPCP termination triggered by rate change action is not sufficient risk protection for customers.

*Response:* WAPA acknowledges a 30-year term for a contract is a significant commitment and understands the concern regarding the ability to terminate the contract. WAPA's GPCP provide for customers to terminate service in the event of a change of rates. However, to address the commenters' concerns, WAPA will exclude Section 11 of the GPCP and, in collaboration with the customers, will clarify Section 11 and insert it directly into the contract.

*Comment:* Several commenters also stated the contracts should provide an exit clause at 5-year intervals during the term, after a change in the rates or terms of service, or after a significant regulatory change. According to the commenters, such a provision would provide protection for customers' ratepayers. Without an undisputable termination provision, commenters asserted that a 30-year take-or-pay contract will be a difficult commitment to make in the current environment of low cost renewable resources relative to the highly uncertain resource availability and allocated costs associated with the Base Resource. Commenters stated that sufficient notice periods would give WAPA time to explore alternative means for marketing power. The commenters strongly recommended consideration of a process that allows customers to terminate or reduce their Base Resource percentages under prescribed conditions. Such conditions could include a requirement that customers attempt to reassign the Base Resource percentage; longer notice provisions; or other criteria that would provide a balance for all parties. Some of these commenters advocated an opportunity for customers, upon reasonable notice, to terminate or modify their Base Resource allocation, for any reason, every five years throughout the term of the contract.

*Response:* As discussed above, WAPA will allow for termination as a result of a rate adjustment. WAPA anticipates electric utility industry changes and has provided for the ability to modify contracts in collaboration with customers in this Marketing Plan; therefore, WAPA does not believe an exit clause will be necessary in response to changes in the electric utility industry. Additionally, WAPA will use best efforts to assist customers that wish to reassign an allocation to the extent there are customers interested in additional allocations.

*Comment:* A commenter advocated a process whereby those customers intending to terminate their Base Resource contracts make an offering to other remaining Base Resource customers prior to filing a notice to terminate the contract. This would allow the remaining Base Resource customers to elect the level of additional Base Resource product that they would want to take and provide an overall balance of certainty for the entire program.

*Response:* If an existing customer surrenders some or all of its Base Resource percentage during a resource pool process, WAPA will first use that surrendered Base Resource percentage to return all existing customers up to their full Base Resource percentage prior to the resource pool reduction. Any remaining Base Resource percentage after all customers are returned to their full Base Resource percentage will be included in the resource pool. Outside of a resource pool period, if a customer were to surrender any or all of its Base Resource percentage, WAPA, at its discretion, will reallocate that Base Resource percentage.

*X. First Preference Entitlement and Allocation*

*Comment:* A commenter stated the Final Plan should state that any and all preference entities located within Calaveras County are eligible to join a joint powers authority (JPA) as members and receive power through such JPA, irrespective if any of those entities receive a Base Resource allocation.

*Response:* Increasing Calaveras County's first preference allocation to serve additional loads of other preference customers would circumvent the allocation process. Additionally, it would lower the amount of Base Resource available for all preference customers.

*XI. Transmission*

*Comment:* A commenter supported continued use of the CVP transmission for Base Resource deliveries.

*Response:* Western acknowledges the comment.

*Comment:* A commenter stated WAPA should work with customers to ensure transmission arrangements are completed to provide for delivery of power made available by the Marketing Plan.

*Response:* WAPA will use best efforts to assist customers with their transmission arrangements. However, because WAPA does not own all the transmission and distribution necessary to serve all customers' loads, obtaining the transmission and distribution service necessary for delivery of WAPA power is ultimately the customers' responsibility.

*Comment:* Several commenters support consideration of the PACI to aid and benefit the CVP. Commenters stated that WAPA's transmission assets can be used to improve the economic benefit of the CVP to preference customers. Commenters also stated that WAPA should carefully manage and use all of its transmission assets to maximize and enhance economic and operational benefits to allow CVP costs to be minimized and benefits to be shared with preference customers. Commenters supported WAPA's commitment to

make surplus transmission available to aid and benefit the CVP. Commenters encouraged WAPA to explore the best use of its surplus transmission, including the Path 15 transmission line, to minimize costs for the CVP while honoring its existing commitments.

*Response:* Under WAPA's OATT, WAPA is required to charge all customers the same rate it charges itself, unless there is a statutory exemption. The PACI legislation (16 U.S.C. 837g) provides that WAPA should sell the excess capacity at equitable rates. Operational control of Path 15 has been turned over to the California Independent System Operator (CAISO). WAPA will continue to examine ways to utilize the PACI to aid and benefit the CVP.

*XII. Changes in the Electric Utility Industry*

*Comment:* Numerous commenters support WAPA incorporating specific provisions to negotiate changes to contracts should changes in the electric industry/markets be significant enough that CVP transactions would need to be managed differently than might be articulated in the contracts. Commenters stated that this may be important in light of the significant changes that continue to impact the electric utility industry. Commenters further stated that the Marketing Plan needs to remain flexible due to the evolving power system, and that WAPA may need to re-evaluate the products and services it offers to continue to provide power at the lowest possible rates consistent with sound business principles. Commenters requested that WAPA clarify that any changes will be done with mutual agreement by WAPA and the customers.

*Response:* WAPA may need to re-evaluate the manner in which it markets the resource due to changes in the electric market. Any contractual changes will be made via mutual consent through an amendment executed by both parties to the contract.

*XIII. Additional Comments*

*Comment:* A commenter stated that, in the Proposed 2025 Schedule, the one-time termination milestone should be removed and replaced with the opportunity to terminate or reduce the Base Resource percentage prior to contract start date.

*Response:* WAPA has determined that a minimum of 6 months is needed to allow time to reallocate any returned allocations. Customers may reduce or return their allocations no later than July 1, 2024.

*Comment:* A commenter asked what credit provisions will be applied to all customers.

*Response:* WAPA's standard credit provisions in effect at the time of contract execution will be applied to all customers.

*Comment:* Numerous commenters stated the Marketing Plan should include a limiter that would cap power customers' payments when power customers' combined CVP power and Restoration Fund payments exceed the annual average of the North of Path 15 market rate. A commenter strongly requested the Marketing Plan include a cap on costs that can be allocated to power customers under certain conditions to ensure the contract remains financially sustainable for customers and provides for a more proportionate allocation of costs between water and power customers. The commenters also stated that contracts should include a cap on power customers' payments when CVP power, Restoration Fund payments, Twin Tunnel payment and all other fees in total exceed the annual average market price. Commenters further stated that Restoration Fund costs are more than a third of the total cost of the Base Resource. While customers indicated that they understand that WAPA's cost recovery mechanisms for the CVP are based on the foundation of recovery for direct project costs through the power revenue requirement, they asked that WAPA explore further the Central Valley Project Improvement Act (CVPIA) costs that are being passed through by Reclamation before Plan implementation. Commenters stated that cost containment and cost certainty must be part of the equation so that Base Resource customers are able to better plan on power expenses and better justify budget impacts. If no significant benefits to power customers are associated with certain cost types, commenters argued that sound cost causation principles would suggest that those costs should not be passed on to power customers. Customers recommended that WAPA agree to suspend the collection of non-essential costs and projects when CVP generation levels are reduced, allowing Federal power to be assessed at rates equal or near alternative power costs. In the customers' view, the GPCP alone would not give customers protection from the CVP cost impacts occurring because of continually increasing CVPIA Restoration Fund costs. Because WAPA rate actions establish total revenue requirements, and not per unit costs, customers believe that the GPCP do not protect customers from increasing per unit costs due to declining CVP power production. Lastly, customers argued that because WAPA rate actions establish total revenue requirements, and do not consider the value of CVP power generated, the GPCP do not protect customers from declining value of CVP production due to water management shifts to periods when power is less valuable.

*Response:* WAPA will sell the Base Resource at a cost-based rate. WAPA is required to recover costs within a statutorily defined period. The public ratemaking process is separate from the development of, and allocation of power under, the Marketing Plan. WAPA encourages the public to participate in WAPA's rate processes. Costs and availability will be more clearly identified by the time commitments are required for the Base Resource. Reclamation develops and implements the programs under the CVPIA, and determines the costs associated with its programs. WAPA is the billing agent for the Restoration Fund charges to the power customers and has no control over those costs; however, WAPA minimizes WAPA components of power costs to provide the best possible service at the lowest possible rates consistent with sound business principles. WAPA will continue to work with Reclamation and the customers on the CVPIA costs Reclamation is passing on to WAPA's customers.

**Summary of Revisions to the Proposed Plan**

WAPA revised the Proposed Plan as a result of the comments received during the comment period and public forums. Additionally, changes have been made to more clearly define the intent, but not to alter the substance, of the original proposal. The revisions are summarized as follows:

WAPA will exclude GPCP Section 11 from the electric service contract and, instead, will include language in the electric service contract developed in collaboration with customers that clearly defines the customers' ability to terminate their contracts after certain rate processes.

The definition of Base Resource is modified to clarify that power includes both capacity and energy. Additionally, the word ''forfeit'' is being replaced with ''surrender'' to more accurately refer to a voluntary return of an allocation.

In response to comments regarding the Custom Product, the definition of Custom Product is modified to clarify it does not include Base Resource and may not necessarily be supplemental power.

**2025 Power Marketing Plan**

The Marketing Plan addresses: (1) The power to be marketed after December 31, 2024, which is the termination date for all existing SNR electric service contracts; (2) the general terms and conditions under which the power will be marketed January 1, 2025, through December 31, 2054; and (3) the criteria to determine who will be eligible to receive allocations from the resource pools.

WAPA will continue a collaborative process in implementing the terms set forth in this Marketing Plan.

Within broad statutory guidelines, WAPA has discretion as to whom and under what terms it will contract for the sale of Federal power, as long as preference is accorded to statutorily-defined public bodies. WAPA markets power in a manner that will encourage the most widespread use at the lowest possible rates consistent with sound business principles. All products and services provided under this Marketing Plan will be subject to the operational requirements and constraints of the CVP and the Washoe Project, transmission availability, purchase power limitations, and Federal authorities.

*I. Acronyms and Definitions*

As used herein, the following acronyms and terms, whether singular or plural, capitalized or not capitalized, shall have the following meanings:

*Allocation* An offer from WAPA to sell Federal power for a certain period of time, which will convert to a right to purchase after execution of a contract.

*Allocation Criteria* Criteria used to determine the amount of energy allocated to allottees.

*Allottee* A preference entity receiving an allocation percentage.

*Ancillary Services* Those services necessary to support the transfer of electricity while maintaining reliable operation of the transmission provider's transmission system in accordance with good utility practice. Ancillary services are generally defined by the North American Electric Reliability Corporation.

*Base Resource* CVP and Washoe Project power (capacity and energy) output determined by WAPA to be available for marketing, including the environmental attributes, after meeting the requirements of project use and first preference customers, and any adjustments for maintenance, reserves, system losses, and certain ancillary services.

*Bill Crediting* Contractual provisions whereby payments due to WAPA by a customer shall be paid by a customer to a third party when so directed by WAPA.

*Capacity* The electrical capability of a generator, transformer, transmission circuit or other equipment.

*Central Valley Project (CVP)* A multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River, south of the City of Bakersfield.

*Contract Principles* Provisions of the electric service contracts, including WAPA's General Power Contract Provisions.

*Custom Product* A combination of products and services which may be made available by WAPA per customer request.

*Customer* An entity with a contract and receiving electric service from WAPA's Sierra Nevada Region.

*Eligibility Criteria* Conditions that must be met to qualify for an allocation.

*Energy* Measured in terms of the work it is capable of doing over a period of time; electric energy is usually measured in kilowatthours or megawatthours.

*Firm* A type of product and/or service that is available to a customer at the times it is required.

*First Preference Customer/Entity* A preference customer and/or a preference entity (an entity qualified to use, but not using, preference power) within a county of origin (Trinity, Calaveras, and Tuolumne) as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones Project provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

*General Power Contract Provisions (GPCP)* Standard terms and conditions included in WAPA's electric service contracts.

*Integrated Resource Plan (IRP)* A process and framework within which the costs and benefits of both demand and supply-side resources are evaluated to develop the least total cost mix of utility resource options.

*Kilowatt (kW)* A unit measuring the rate of production of electricity; one kilowatt equals one thousand watts.

*Marketing Plan* WAPA's final 2025 Power Marketing Plan for the Sierra Nevada Region.

*Megawatt (MW)* A unit measuring the rate of production of electricity; one megawatt equals one million watts.

*Net Billing* Payments due to WAPA by a customer may be offset against payments due to that customer by WAPA.

*Power* Capacity and energy.

*Preference* The requirements of Reclamation Law that provide for preference in the sale of Federal power be given to certain entities, such as governments (state, Federal and Native American), municipalities and other public corporations or agencies, and cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (*See, e.g.,* Reclamation Project Act of 1939, Section 9(c), 43 USC 485h(c)).

*Primary Marketing Area* The area generally encompassing northern and central California extending from the Cascade Range to the Tehachapi Mountains and west-central Nevada.

*Project Use* Power as defined by Reclamation Law and/or used to operate CVP and Washoe Project facilities.

*Reclamation Law* Refers to a series of Federal laws with a lineage dating back to the late 1800s. Viewed as a whole, those laws create the framework under which WAPA markets power.

*Reimbursable Financing* WAPA may purchase power or provide other services using reimbursable authority pursuant to the Economy Act, 31 USC 1535. This is a funding mechanism used by Federal customers.

*Sierra Nevada Region (SNR)* The Sierra Nevada Region of the Western Area Power Administration.

*Unbundled* Electric service that is separated into its components and offered for sale with separate rates for each component.

*WAPA* Western Area Power Administration, United States Department of Energy, a Federal power marketing administration responsible for marketing and transmitting Federal power pursuant to Reclamation Law and the DOE Organization Act (42 USC 7101, *et seq.*).

*Washoe Project* A Federal water project located in the Lahontan Basin in west-central Nevada and east-central California.

*II. Base Resource*

The Base Resource, as defined in Section I., will include CVP and Washoe Project power. CVP generation will vary hourly, daily, monthly, and annually because it is subject to hydrological conditions and other constraints that may govern CVP operations. CVP generation must be adjusted for project use, first preference, maintenance, reserves, system losses, and certain ancillary services before the Base Resource is available for marketing. The Base Resource will be further adjusted

for transmission losses to the point of delivery.

The U.S. Department of the Interior, Fish and Wildlife Service (F&WS), Lahontan National Fish Hatchery and Marble Bluff Fish Facility are project use loads of the Washoe Project and have first priority to those power resources. WAPA will continue to make every effort to provide the Washoe Project power resource to F&WS. The generation available after serving the F&WS needs will be marketed with the CVP power resources. The Washoe Project is subject to the same variability and constraints as the CVP.

*III. Products and Services*

WAPA will market its Base Resource alone or in combination with a Custom Product, which could include purchasing some level of firming power on behalf of all customers, a group of customers, or individual customers. All costs incurred by WAPA in providing additional services to customers will be paid by those customers using the services. The degree to which WAPA continues to purchase power will depend on customer requests and Federal authorities.

Each allottee will be allocated a percentage of the Base Resource. All allottees will be required to commit to the Base Resource within 6 months of a contract offer.

Upon request, WAPA may develop a Custom Product for any customer. A Custom Product may include any products or services mutually negotiated between WAPA and a customer. This may include firming and/or renewable power purchases, ancillary services, reserves, portfolio management services, scheduling coordinator services, etc. Commitments to purchase a Custom Product must be made by January 1, 2023, for a period of no less than 5 years of service, beginning January 1, 2025. Thereafter, the Custom Product will be offered for periods as determined by WAPA. All costs incurred by WAPA in providing Custom Product services to customers will be paid by those customers using the services.

WAPA may, at its discretion, extend the commitment dates for the Base Resource and/or Custom Products.

WAPA will manage an exchange program to allow all customers to fully and efficiently use their power allocations. Any power allocated by WAPA to a customer that cannot be used on a real-time basis due to that customer's load profile will be offered under this program to other customers. The exchange program will be developed in collaboration with the customers.

Any unused resources may be marketed for periods of time as determined by WAPA, and may be marketed outside the primary marketing area. Such sales may be to any entity (preference or non-preference), under any terms, conditions, rates, or charges determined solely by WAPA.

*IV. Resource Extensions and Resource Pool Allocations*

WAPA will initially provide 98 percent of its available power resources to existing customers and establish a resource pool with the remaining power resources for new allocations. Starting on January 1, 2040, WAPA will reduce the then-existing customers' allocations by 1 percent to develop the 2040 resource pool.

A. Extension for Existing Customers

Starting January 1, 2025, existing customers will have a right to purchase 98 percent of their current Base Resource percentage amount; except as provided below:

1. In the event that an existing customer(s) surrenders some or all of its allocation prior to 2025, that percentage, up to 2 percent of the total Base Resource, will be returned to the existing customers on a *pro rata* basis.

2. In January 2024, WAPA will compare all existing customers' allocations to their loads. WAPA will use the average Base Resource MWh annual generation and the customers' previous 5 years energy consumption to compare allocations to loads. No customer should have an allocation greater than its load. If, after the comparison, WAPA believes a customer(s) has an allocation greater than its load, WAPA will consult with the customer(s) to determine if the allocation is, in fact, larger than its load. If WAPA determines the allocation is too large, WAPA will reduce that customer(s) allocation to 98 percent of its load.

3. Starting on January 1, 2040, WAPA will reduce all customers' allocations, including 2025 Resource Pool customers, by an additional 1 percent to create the 2040 Resource Pool. WAPA will follow the steps listed in IV.A.1. and IV.A.2. in January 2039 when creating the 2040 Resource Pool.

B. Resource Pool Allocations

WAPA will establish a resource pool by reserving a portion of the power available after 2024 for allocation to eligible preference entities and existing customers. A second resource pool will be established for service starting on January 1, 2040. Allocations from the resource pools will be determined through a separate public process at a later date.

1. Resource Pool Amount

The 2025 Resource Pool will initially consist of 2 percent of the power resources available after 2024, and the 2040 Resource Pool will initially consist of 1 percent of the power resources available after 2039. Should any Base Resource become available because of Sections IV.A.1., IV.A.2., or IV.A.3., above, WAPA will include the additional Base Resource in the appropriate resource pool. WAPA will, at its discretion, allocate a percentage of the resource pools to applicants that meet the Eligibility and Allocation Criteria.

2. Eligibility Criteria

WAPA will apply the following Eligibility Criteria to all applicants seeking a resource pool allocation under the Marketing Plan:

a. Applicants must meet the preference requirements under Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)(1)), as amended and supplemented.

b. Applicants should be located within SNR's primary marketing area (map of marketing area available upon request). If SNR's power resources are not fully subscribed, WAPA may market its resource outside the primary marketing area.

c. Applicants that require power for their own use must be ready, willing, and able to receive and use Federal power.

d. Applicants that provide retail electric service must be ready, willing, and able to receive and use the Federal power to provide electric service to their customers, not for resale to others.

e. Applicants must submit an application in response to the Call for Resource Pool Applications issued by WAPA in a separate **Federal Register** notice. The notice will include the deadline for receipt of those applications.

f. Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975 (25 U.S.C. 5304).

g. WAPA generally will not allocate power to applicants with loads of less than 1 MW; however, allocations to applicants with loads which are at least 500 kilowatts may be considered, provided the loads can be aggregated with other allottees' loads to schedule and deliver to a minimum load of 1 MW.

3. Allocation Criteria

The following Allocation Criteria will apply to all applicants receiving a resource pool allocation under the Marketing Plan:

a. Allocations will be made in amounts as determined solely by WAPA in the exercise of its discretion under Reclamation Law and considered to be in the best interest of the U.S. Government.

b. Allocations will be based on the applicant's load during the calendar year prior to the Call for Applications or the amount requested, whichever is less.

c. An allottee will have the right to purchase power from WAPA only upon the execution of an electric service contract between WAPA and the allottee, and satisfaction of all conditions in that contract.

d. All customers, including those receiving an allocation from the 2025 Resource Pool, will be subject to the 2040 Resource Pool adjustment.

e. Eligible Native American applicants will receive greater consideration for an allocation of up to 65 percent of their total energy load in the calendar year prior to the Call for Applications, as authorized by 25 U.S.C. 3505.

*V. General Criteria and Contract Principles*

The following criteria and contract principles apply to all contracts executed under the Marketing Plan, except that certain criteria may not apply to contracts for first preference customers (see Section VI.):

A. Electric service contracts shall be executed within 6 months of a contract offer, unless otherwise agreed to in writing by WAPA.

B. Allocation percentages shall be subject to adjustment.

C. All power supplied by WAPA will be delivered pursuant to a scheduling arrangement.

D. Customers will be required to pay for their percentage of the Base Resource, regardless of whether they can actually use the power.

E. Customers must pay for all charges associated with the products and services provided, including charges associated with ancillary services, Custom Products, and transmission. Those charges will be passed on to the customer(s) contracting for the product or service.

F. WAPA will develop rate schedules for services provided under the Marketing Plan. Such rates will be developed through a separate public process.

G. Customers must pay all applicable rates and charges in the manner and within the time prescribed in the contract.

H. A written commitment to the Custom Product will be required on or before January 1, 2023. WAPA may extend the final commitment dates for the Custom Product.

I. Contracts will include clauses specifying criteria that customers must meet on a continuous basis to be eligible to receive electric service from WAPA.

J. Upon request, WAPA may provide, or assist each new and existing customer in obtaining, transmission arrangements for delivery of power marketed under the Marketing Plan; nonetheless, each entity is ultimately responsible for obtaining its own delivery arrangements for its load. Transmission service over the CVP system will be provided in accordance with Section VII. of this Marketing Plan.

K. Contracts shall provide for WAPA to furnish electric service beginning either January 1, 2025, or January 1, 2040, and continuing through December 31, 2054.

L. Specific products and services may be provided for periods of time as agreed to in the electric service contract.

M. Contracts shall incorporate WAPA's standard provisions, policies and procedures for electric service contracts, integrated resource plans, and GPCP, as determined by WAPA. WAPA will exclude Section 11 of the GPCP from the electric service contracts and, instead, will include language developed in collaboration with the customers that clearly defines the customers' ability to terminate their electric service contracts after certain rate processes.

N. Contracts will include a clause that allows WAPA to reduce or rescind a customer's allocation percentage, upon 90 days' notice, if WAPA determines that (1) the customer is not using this power to serve its own loads, except as otherwise specified in Section III.; or (2) the allocation amounts are consistently greater than the customer's maximum load.

O. Any power not under contract may be allocated at any time, at WAPA's sole discretion, or sold as deemed appropriate by WAPA, consistent with Federal law.

P. Contracts will include a clause providing for WAPA to adjust the customers' allocation percentage for the 2040 Resource Pool.

Q. Contracts may include a clause providing for alternative funding arrangements, including Net Billing, Bill Crediting, Reimbursable Financing, and advance payment.

*VI. First Preference Entitlement and Allocation*

The Trinity River Division Act and the New Melones Project provisions of the Flood Control Act of 1962 (Acts) specify that contracts for the sale and delivery of the additional electric energy, available from the CVP power system as a result of the construction of the plants authorized by these Acts and their integration into the CVP system, shall be made in accordance with preferences expressed in Reclamation Laws. These Acts also provide that a first preference of up to 25 percent of the additional energy shall be given, under Reclamation Law, to preference customers in the counties of origin (Trinity, Tuolumne, and Calaveras), for use in those counties, who are ready, willing, and able to enter into contracts for the energy.

WAPA will calculate and allocate the Maximum Entitlements of First Preference Customers (MEFPC), which is the maximum amount of energy available to first preference customers/entities, in accordance with the following:

A. The MEFPC will be calculated separately for the New Melones Project, Calaveras and Tuolumne Counties, and the Trinity River Division (TRD), Trinity County (first preference projects). To determine the 25 percent of additional energy made available to the CVP as a result of the construction of each of these projects, WAPA will use the average of the previous 20 years of historical annual generation. The TRD MEFPC includes generation from Trinity, Carr, and Spring Creek Powerplants and a portion of the Keswick Powerplant generation. Based on the most current information available, this calculation results in an estimated MEFPC of 122,800 MWh available from the New Melones Project, and an estimated MEFPC of 361,500 MWh available from the TRD. WAPA will calculate the MEFPC on June 1, 2024, to be applicable January 1, 2025. WAPA will recalculate the MEFPC every 5 years thereafter.

B. Upon recalculation, if the MEFPC from a first preference project is 10 percent above or below the currently applicable MEFPC from that first preference project, the MEFPC will be adjusted to reflect that increase or decrease. WAPA will notify affected first preference customers at least 6 months before making an adjustment to the MEFPC. If recalculation reduces the MEFPC to an amount less than the load previously served, WAPA may, upon request and at its discretion, make purchases necessary to replace that

amount of power no longer available. The costs for all such purchases made on behalf of a first preference customer will be passed on to that first preference customer.

C. An allocation made to a first preference customer/entity under the Marketing Plan will be based on the power requirements of that first preference customer/entity. The sum of allocations of first preference power, including losses, shall not exceed the MEFPC from each first preference project, or a county of origin's share of the MEFPC, except as allowed under Section VI.G. below.

D. WAPA will provide full requirements service as described below to first preference customers. The first preference customer will be responsible for transformation and transmission losses to the first preference customer delivery point. Transmission losses shall include losses for CVP transmission and third-party transmission.

WAPA will provide the first preference customer with its full power requirements (capacity and energy) up to its right to the MEFPC at the Base Resource rate. If there is more than one first preference customer in a county of origin, or a first preference entity in that county makes a request for power, WAPA reserves the right to establish a maximum amount of power available to each first preference customer from the MEFPC. Payment for full requirements service will be based on usage.

E. A first preference entity may exercise its right to use a portion of the MEFPC by providing written notice to WAPA at least 18 months prior to the anniversary date of the first preference project located in its county. The anniversary date is the successive fifth year anniversary of the date the Secretary of the Interior declared the availability of power from the powerplants in the counties of origin. New applications for service to begin on January 1, 2025, must be received 18 months prior to January 1, 2022 (*i.e.,* July 1, 2020), for Trinity County and 18 months prior to April 5, 2022 (*i.e.,* October 5, 2020), for Calaveras and Tuolumne Counties. Other anniversary years applicable to this Marketing Plan are 2027, 2032, 2037, 2042, 2047, and 2052.

F. If the request of a first preference customer/entity for power, including adjustment for losses, is greater than the remaining MEFPC from that county's first preference project, then WAPA will allocate the remaining MEFPC to the first preference customer/entity first making a request for a power allocation or a justified increase in its allocation percentage.

G. Power allocated to first preference customers/entities in Tuolumne and Calaveras Counties will be subject to the following additional conditions:

1. Tuolumne and Calaveras Counties shall each be entitled to one-half of the New Melones Project MEFPC.

2. If first preference customers in either Tuolumne County or Calaveras County are not using their county's full one-half share, and a first preference customer/entity in the other county requests power in an amount exceeding that county's one-half share, then WAPA will allocate the unused power, on a withdrawable basis, to the requesting first preference customer/entity. Such power may be withdrawn for use by a first preference customer/entity in the county not using its full one-half share upon 6 months' written notice from WAPA.

H. Trinity Public Utilities District is currently the sole recipient of the TRD's first preference rights.

I. Transmission service will be provided in accordance with applicable laws and Section VII. of this Marketing Plan.

J. For planning purposes, first preference customers may be required to provide forecasts and other information required by WAPA as set forth in the electric service contract.

K. The general criteria and contract principles set forth in Sections V.A., C. through I., K., M., and O. of this Marketing Plan will apply to first preference customers.

*VII. Transmission Service*

Allottees and customers must secure necessary transmission service to deliver Federal power. WAPA will provide transmission service to deliver the Base Resource over the CVP transmission system. WAPA will work with allottees and customers to secure bundled or unbundled transmission services as appropriate beyond its CVP transmission system in conjunction with its power sales in a manner consistent with FERC orders, legislated mandates, or CAISO agreements. While WAPA will work with allottees and customers, it is the allottees' and customers' obligations to secure all necessary transmission service.

Generally, WAPA will market surplus transmission capacity on the CVP and COTP available under WAPA's OATT. The legislation authorizing the PACI (16 U.S.C. 837g) provides for the Secretary of Energy to market surplus available transmission capacity on the PACI at equitable rates to aid and benefit the CVP. WAPA will determine the use of its transmission resources concurrently with further development of the products and services under this Marketing Plan. Specific terms and conditions for surplus transmission sales will be provided for in future service agreements. WAPA will develop transmission rates under a separate proceeding.

*VIII. Changes in the Electric Utility Industry*

WAPA recognizes that there have been, and continue to be, significant changes in the electric utility industry. To address this concern, WAPA, in collaboration with its customers, will include the ability to make changes in how the Federal resource is marketed if there is deemed a benefit to WAPA and its customers. Any changes implemented would be done through negotiation and revision to individual customer contracts.

**Authorities**

WAPA developed this Marketing Plan in accordance with its power marketing authorities pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts specifically applicable to the projects involved.

**Regulatory Procedure Requirements**

*Review Under the Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), WAPA has received approval from the Office of Management and Budget for the collection of customer information in this rule, under control number 1910–5136, which expires on September 30, 2017.

*Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires preparation of an initial regulatory flexibility analysis whenever an agency is required by 5 U.S.C. 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule. A final regulatory flexibility analysis is required whenever the agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking. WAPA has determined that the analytical requirements of the Regulatory Flexibility Act do not apply to this rulemaking because it is a

rulemaking involving services applicable to public property.

*Environmental Compliance*

In compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4370), Council on Environmental Quality NEPA implementing regulations (40 CFR parts 1500–1508), and DOE NEPA implementing regulations (10 CFR part 1021), WAPA completed a Categorical Exclusion (CX). Since WAPA is reallocating its existing resources and is not planning to increase its generation or transmission under this Marketing Plan, a CX is the appropriate level of environmental review.

*Determination Under Executive Order 12866*

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this **Federal Register** notice by the Office of Management and Budget is required.

Dated: July 6, 2017.

**Mark A. Gabriel,**

*Administrator.*

[FR Doc. 2017–17210 Filed 8–14–17; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OLEM–2017–0458; FRL–9966–52–OLEM]**

## Release of Interim Final Guidance for State Coal Combustion Residuals Permit Programs; Comment Request

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

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the availability of and requests comment on a document titled *Coal Combustion Residuals State Permit Program Guidance Document; Interim Final.* As a result of the Water Infrastructure Improvements for the Nation (WIIN) Act signed by the President on December 16, 2016, States may submit coal combustion residuals (CCR) programs to EPA for review and approval. This document describes EPA's interpretations of the WIIN Act provisions and the way in which EPA generally intends to review State programs.

**DATES:** Comments must be received on or before September 14, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2017–0458; Title: Coal Combustion Residuals (CCR) State Permit Program Guidance Document (Interim Final) 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. 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://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Mary Jackson, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (703) 308–8453; email address: *jackson.mary@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 2301 of the Water Infrastructure Improvements for the Nation Act (WIIN) Act amended the Resource Conservation and Recovery Act to allow States to submit and EPA to approve State permit (or other system of prior approval and conditions) programs for CCR.

*Coal Combustion Residuals State Permit Program Guidance Document; Interim Final* is designed to provide information about the provisions of the 2016 WIIN Act, related to CCR, as well as the process and procedures EPA generally intends to use to review and make determinations on State CCR Permit Programs. The purpose of this document is to provide States guidance for developing and submitting a State CCR Permit Program for EPA approval.

The document has four (4) chapters. The first two are in the form of questions and answers. The first chapter provides an overview of the provisions of the WIIN Act. The second chapter contains the process and procedures EPA is currently planning to use to review and make determinations on State CCR programs, as well as the documentation EPA generally expects to request from States seeking approval of a program. The third and fourth chapters consist of checklists to aid the States as they are considering and developing their program submittals. Chapter 3 contains a checklist of all the requirements of the current CCR rule at 40 CFR part 257 subpart D. Chapter 4 provides a checklist of those items EPA generally expects a State would submit when seeking approval of its CCR program.

This guidance describes EPA's statutory interpretations and the way in which EPA generally intends to review State programs. As such, EPA encourages States to consult this interim final guidance and to use it as a technical resource as they develop and submit State CCR Permit programs to EPA for review and approval. As provided by Section 2301 of the WIIN Act, EPA must provide public notice and an opportunity for comment prior to approval of a State program by EPA. Thus, EPA's review and approval of a State program will be a separate process from this action that will provide for public notice and opportunity for comment on each State program.

The information and procedures in the document are intended as a technical resource to States that may be useful in developing and submitting a State CCRs Permit Program to EPA for approval. This Guidance does not constitute rulemaking by the Agency, and cannot be relied on to create a substantive or procedural right enforceable by any party in litigation with the United States. As indicated by the use of non-mandatory language such as ''may'' and ''should,'' it only provides recommendations and does not impose any legally binding requirements.

The guidance document can be found in the docket (Docket ID No. EPA–HQ–OLEM–2017–0458; Title: Coal Combustion Residuals (CCR) State Permit Program Guidance Document (Interim Final)) at *http://www.regulations.gov.* In addition, a copy of the guidance document and additional resources on CCR can also be found on EPA's Web site: *www.epa.gov/coalash.*

Dated: August 9, 2017.

**Nigel Simon,**

*Acting Principal Deputy Assistant Administrator, Office of Land and Emergency Management.*

[FR Doc. 2017–17270 Filed 8–14–17; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Privacy Act of 1974; System of Records

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** The Federal Communications Commission (FCC or Commission or Agency) is modifying an existing system of records, FCC/WCB–1, Lifeline Program, subject to the *Privacy Act of 1974,* as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The Lifeline Program (or ''Lifeline'') provides discounts for voice telephony (*i.e.,* telephone service) and broadband Internet access service (BIAS) to qualifying low-income individuals (*i.e.,* one Lifeline Program telephone per household). Individuals may qualify for Lifeline through proof of income or participation in another qualifying program. Since the Telecommunications Act of 1996 (1996 Act), the Lifeline Program has been administered by the Universal Service Administrative Company (USAC) under the direction of the Commission and, by delegation, of the Commission's Wireline Competition Bureau (WCB). This system of records contains information about individual Lifeline Program participants. The modifications described in this notice will allow USAC to maintain and administer this system in a manner that promotes efficiency and minimizes waste, fraud, and abuse.

**DATES:** Written comments are due on or before September 14, 2017. This action (including the routine uses) will become effective on September 14, 2017 unless comments are received that require a contrary determination.

**ADDRESSES:** Send comments to Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This notice serves to update and modify FCC/WCB–1, Lifeline Program, to include PII that will be obtained and processed by the National Verifier, which is being deployed as adopted in the Commission's 2016 Lifeline and Link Up Reform and Modernization Third Report and Order to make eligibility determinations and perform a variety of other functions necessary to enroll individuals into the Lifeline program. *See Lifeline and Link Up Reform and Modernization et al.,* Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006, para. 126 (2016) (*2016 Lifeline Modernization Order*). The National Verifier will be comprised of both the existing National Lifeline Accountability Database (NLAD) system and a new Lifeline Eligibility Database (LED). The WCB is also making various other updates and modifications to comply with current OMB and FCC policies and practices. The Lifeline Program serves low-income individuals by providing qualifying individuals (*i.e.,* one Lifeline Program telephone per household) with discounts on voice telephony and BIAS service. Since the Telecommunications Act of 1996 (1996 Act), the Lifeline Program has been administered by the Universal Service Administrative Company (USAC) under the direction of the Commission and, by delegation, of WCB. The substantive changes and modifications to the previously published version of the FCC/WCB–1 system of records include:

(a) Changes to the security classification;

(b) Expansion of the system's purposes as provided in the *2016 Lifeline Modernization Order* with the implementation of the National Verifier to make eligibility determinations and perform a variety of other functions necessary to enroll eligible subscribers into the Lifeline Program (or ''Lifeline''); to add broadband Internet access service (BIAS) as a Lifeline-eligible service; to include all PII used to determine an individual's eligibility to participate in the program and recertify eligibility where the National Verifier is not responsible for eligibility determinations; to include the PII that will be used by the National Verifier to verify an individual's eligibility for the program and recertify program participants where the National Verifier is responsible for eligibility determinations and recertification; to cover the PII that is used to ensure that individuals in a single household do not receive more than one Lifeline Program benefit; to include the PII that is needed for call center inquiries regarding eligibility and dispute resolution; to include the information necessary for the System Integrator to develop, test, and operate the database system and network that will be used to implement and operate the National Verifier; and to include the information submitted to the National Verifier by subscribers seeking information on the status of their eligibility or for dispute resolution purposes.

(c) Expansion of the categories of individuals to include individuals who enable another individual in their household to qualify for benefits; or are individuals acting on behalf of an eligible telecommunications carrier who have enrolled individuals in the Lifeline Program;

(d) Expansion of the categories of records to include information on whether the individual resides on Tribal lands, information on whether the address is temporary and/or descriptive and whether it includes coordinates, mailing address (if different), Tribal identification number, telephone number, full name of the qualifying person (if different from the individual applicant), the last four digits of the qualifying person's social security number, qualifying person's date of birth, documents demonstrating eligibility, documents demonstrating identity, individual contact information, Lifeline subscriber identification number, security question, answer to security question, user name, password, agent identification information (if an agent is assisting in completing the application), individual's eligibility certifications, and individual's signature and date of application;

(e) Updating language and/or renumbering 9 routine uses: (1) FCC/USAC Program Management; (2) Third Party Contractors; (5) State Agencies and Other Authorized State Government Entities; (10) FCC Enforcement Actions; (11) Congressional Inquiries; (12) Government-Wide Program Management and Oversight; (13) Income and Program Eligibility Records; (14) Law Enforcement and Investigation; and (16) Breach Notification to comply with OMB requirements (M–17–12);

(f) Merging of two routine uses (15) Adjudication and Litigation (now includes the previous Department of Justice routine use), formerly (10) and (11) respectively;

(g) Addition of 11 new routine uses: (3) Business Process Outsource (BPO) Entity to allow a BPO employee access to Lifeline Program information related

to the National Verifier; (4) System Integrator (SI) to allow a SI employee access to Lifeline Program information to develop, test and operate the database system and network; (6) Social Service Agencies and Other Approved Third Parties to allow USAC approved social service entities to assist individuals to apply for the Lifeline Program; (7) Federal Agencies to allow data sharing between FCC/USAC and other Federal agencies; (8) Tribal Nations to allow Tribal Nations to assist with Lifeline Program services; (9) Service Providers to allow designated ETC service providers to assist with providing Lifeline Program supported services and obtain reimbursement; (17) Assistance to Federal Agencies and Entities to comply with OMB requirements (M–17–12); (18) Computer Matching Program Disclosure for purposes of conducting computer matching programs; (19) Prevention of Fraud, Waste, and Abuse Disclosure; (20) Information Sharing Environment Disclosure; and (21) Reports from the National Verifier to allow for aggregated and non-aggregated reports to approved parties.

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage, retrieval, and retention and disposal of the records; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

**SYSTEM NAME AND NUMBER:**

FCC/WCB–1, Lifeline Program.

**SECURITY CLASSIFICATION:**

No information in the system is classified.

**SYSTEM LOCATION(S):**

Universal Service Administrative Company (USAC), 700 12th Street NW., Suite 900, Washington, DC 20005; and

Wireline Competition Bureau (WCB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

USAC administers the Lifeline Program for the FCC.

Address inquiries to the Universal Service Administrative Company (USAC), 700 12th Street NW., Suite 900, Washington, DC 20005; or

Wireline Competition Bureau (WCB), 445 12th Street SW., Washington, DC 20554.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

47 U.S.C. 151–154, 201–205, 214, 254, 403. 47 CFR Sections 54.400–54.423.

**PURPOSE(S):**

The Lifeline Program provides discounts for voice telephony and BIAS service, and the initial connection charge in Tribal areas to support such service, to qualifying low-income individuals (*i.e.,* one Lifeline telephone service per household). Individuals may qualify for Lifeline through proof of income or proof of participation in another qualifying program. The Lifeline Program system of records currently covers the PII that is used to determine an individual's eligibility to participate in the program. The system is being revised as a result of the *2016 Lifeline Modernization Order* to add the PII that will be used by the National Verifier and its associated uses. As a result, all PII that is used for one or more purposes in the Lifeline Program system of records' seven functions, listed below, will be covered. The information in these functions includes, but is not limited to:

1. *Initial Eligibility Determination:*

(a) The information that is used to verify an individual's eligibility to participate in the Lifeline Program, which will be evaluated by the eligible telecommunications carrier (ETC), USAC, or the applicable State authority in those areas where the National Verifier is not responsible for verifying eligibility.

(b) The information that is used to verify an individual's eligibility to participate in the Lifeline Program using the National Verifier in those areas where the National Verifier is responsible for eligibility determination, which is now extended to include individuals who reside on Tribal Lands.

2. *Recertification of Subscribers:*

(a) The information used by USAC to recertify Lifeline subscribers for ETCs that elect to have USAC act on their behalf to recertify their Lifeline subscribers in those areas where the National Verifier is not responsible for recertification of a subscriber's Lifeline eligibility.

(b) The information that is used by an ETC or applicable State authority to recertify an individual's continued eligibility to participate in the Lifeline Program in those areas where the National Verifier is not responsible for recertification of a subscriber's Lifeline eligibility.

(c) The information that is used to recertify an individual's continued eligibility to participate in the Lifeline Program and to be recertified using the National Verifier in areas where the National Verifier is responsible for re-certification of a subscriber's Lifeline eligibility.

(d) If the automated National Verifier recertification process is unable to recertify an individual, the recertification process will be done manually.

3. *One-Per-Household Evaluation:*

The information that is used to determine whether an individual in a household, who is applying for a Lifeline Program benefit, is already receiving a Lifeline Program benefit from one or more providers, *i.e.,* that individuals in a single household do not receive more than one Lifeline Program benefit as required by 47 CFR Sections 54.404 and 54.410.

4. *Call Center Operations, Eligibility:*

The information that is contained in the records of the inquiries that ETCs and individuals make to the USAC contractor call center to verify that an individual is eligible to participate in the Lifeline Program.

5. *Call Center Operations, Dispute Resolution:*

USAC will designate a third party contractor to establish a call center as part of USAC's dispute resolution processes. The contractor will operate this call center, which individuals may use who are seeking to participate in or are already participating in the Lifeline Program. These individuals may call the center to ensure that they have not been improperly denied access to Lifeline Program benefits through the verification process. Any information generated by these inquiries will constitute a separate, distinct database, which will include, but is not limited to, recordings of live agent calls, identity of the user initiating the request, brief description of the request, type of request, identification of the USAC-approved script used in responding to the request, resolution status, and whether the request was escalated (*i.e.,* if the agent escalates the issue to the agent's manager or USAC program personnel). This information will be used, among other things, to verify the accuracy of the information stored in the Lifeline system.

6. *Database System Development, Testing and Operation:*

USAC will designate a third-party contractor to develop, test, and operate the database and system network. The contractor will establish the core database and automated connections to other databases. This information will be used, among other things, to develop technical parameters for database connections and matching criteria.

7. *National Verifier Status Requests and Dispute Resolution:*

(a) The information that is submitted to the National Verifier by subscribers

when seeking information on the status of their eligibility.

(b) The information that is submitted to the National Verifier for dispute resolution purposes. Records in the Lifeline system are available for public inspection after redaction of information that could identify the individual participant, such as the individual's first and last name(s), date of birth, last four digits of social security number, tribal ID number, telephone number, or other PII.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The categories of individuals in this system include, but are not limited to, those individuals (residing in a single household) who have applied for benefits; are currently receiving benefits; are individuals who enable another individual in their household to qualify for benefits; are minors whose status qualifies a parent or guardian for benefits; are individuals who have received benefits under the Lifeline Program; or are individuals acting on behalf of an ETC who have enrolled individuals in the Lifeline Program, which serves low-income individuals by providing these qualifying individuals with discounts on telephone and BIAS service for their household.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The categories of records in the system include, but are not limited to the information that is encompassed in one or more of the Lifeline Program system of records' seven functions and associated uses.

1. *Initial Eligibility Determination,* 2. *Recertification of Subscribers,* 4. *Call Center Operations, Eligibility,* 5. *Call Center Operations, Dispute Resolution,* and 7. *National Verifier Status Requests and Dispute Resolution* will collect, use, and maintain PII in their databases and files that includes, but is not limited to: individual applicant's first and last name; residential address; information on whether the individual resides on Tribal lands; information on whether the address is temporary and/or descriptive and whether it includes coordinates; mailing address (if different); date of birth; last four digits of social security number [1] or Tribal identification number; telephone number; full name of the qualifying person (if different from the individual applicant); qualifying person's date of birth; the last four digits of the qualifying person's social security number or their Tribal identification number; information on whether the qualifying person resides on Tribal lands; means of qualification for Lifeline (*i.e.,* income or relevant program participation); documents demonstrating eligibility; individual contact information; Lifeline subscriber identification number; security question; answer to security question; user name; password; agent identification information (if an agent is assisting in completing the application); individual applicant's eligibility certifications; individual applicant's signature and date of application; Lifeline service initiation date and termination date; amount of Lifeline support received per month; date of the provision of Link-Up support (if applicable).

3. *One-Per-Household Evaluation* contains the PII on whether the individual's husband, wife, or domestic partner living at the same address has Lifeline-discounted service; whether another adult that lives with the individual has a Lifeline-discounted service; and whether the individual shares expenses for bills, food, or other living expenses and shares income with the other adult that lives with them. In order to determine whether the information is accurate, the identity information associated with the individual applicant is confirmed with a third-party verification service not in the control of USAC or the Commission.

4. *Call Center Operations, Eligibility* will also collect, use, and store PII that includes the information that is contained in the records of the inquiries that ETCs and individuals make to the USAC contractor call center to verify that an individual is eligible to participate in the Lifeline Program.

5. *Call Center Operations, Dispute Resolution* will also collect, use, and store PII that includes information (which is housed in a separate, distinct database) that is used, among other things, to verify the accuracy of the information in the Lifeline system. It includes, but is not limited to, the live recordings (*i.e.,* voice prints) and related information associated with agent conversations with individuals who initiate calls to the call center. The PII includes, but is not limited, to the brief description of the request, type of request, identification of the USAC-approved script used in responding to the request, resolution status, and whether the request was escalated (*i.e.,* if the agent escalates the issue to the agent's manager or USAC program personnel).

6. *Database System Development, Testing and Operation* will collect, use, and store information that will comprise the PII from these other six Lifeline functions that is used, among other things, to develop technical parameters for database connections and matching criteria.

7. *National Verifier Status Requests and Dispute Resolution* will also collect, use, and store PII that includes the information that is contained in the records of status requests and dispute resolution requests individuals make via the National Verifier.

**RECORD SOURCE CATEGORIES:**

The sources for the information in the Lifeline Program system of records include, but are not limited to:

1. The information that ETCs must provide to verify eligibility prior to enrolling individuals and/or to re-certify individuals (in qualifying households) for participation in the Lifeline Program and any associated agent identification information if an agent of an ETC is assisting an individual in applying for Lifeline benefits.

2. The information that individuals (in qualifying households) must provide to determine their households' eligibility and re-certify for participation in the Lifeline Program, *e.g.,* participating in other qualifying programs and/or services.

3. The information submitted to the National Verifier to determine if an individual is eligible and to re-certify the individual for participation in the Lifeline Program where the National Verifier is responsible for eligibility determination and re-certification.

4. The information collected from State and Federal databases which reflects information on individuals eligible for qualifying programs, even if not all such individuals are applying for the Lifeline benefit or participating in the Lifeline Program.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows. In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose(s) for which the records were collected:

1. FCC/USAC Program Management—To the FCC and USAC employees to conduct official duties associated with

[1] In cases where documentation containing the individual's full social security number is provided, all but the last four digits of the number will be immediately redacted.

the management and operation of the Lifeline Program, the NLAD and the LED (which together comprise the National Verifier), as directed by the Commission.

2. Third Party Contractors—To an employee of a third-party contractor engaged by USAC or an ETC to, among other things, develop the Lifeline Eligibility Database, conduct the eligibility verification process, recertification process, and assist in dispute resolution.

3. Business Process Outsourcing (BPO) Entity—To an employee of the BPO engaged by USAC to perform and review eligibility evaluations where the National Verifier is responsible for such processes for purposes of performing manual eligibility verification (when needed) and to assist in dispute resolution.

4. System Integrator (SI)—To an employee of the SI engaged by USAC as needed to develop, test, and operate the database system and network.

5. State Agencies and Other Authorized State Government Entities—To designated State agencies and other authorized entities, which include, but are not limited to, State public utility commissions, State departments of health and human services or other State agencies that share data with USAC or the FCC for purposes of eligibility verification, and their agents, as is consistent with applicable Federal and State laws, in order to: administer the Lifeline Program on behalf of an ETC in that State; perform other management and oversight duties and responsibilities; enable the National Verifier to perform eligibility verification for individuals applying for or re-certifying for Lifeline support; obtain enrollment and other selected reports; develop and operate data sharing agreements with USAC or the FCC; compare information contained in the National Lifeline Accountability Database (NLAD) and Lifeline eligibility, recertification, and related systems to information contained in state databases associated with State-administered Lifeline Programs in order to assess differences between State and Federal programs and make adjustments.

6. Social Service Agencies and Other Approved Third Parties—To social service agencies and other third parties that have been approved by USAC for purposes of assisting individuals in applying for Lifeline support.

7. Federal Agencies—To other Federal agencies for the development of and operation under data sharing agreements with USAC or the FCC including, but not limited to, the Department of Housing and Urban Development (HUD), the Centers for Medicare and Medicaid Services (CMS), the Social Security Administration (SSA), and the Department of Veterans' Affairs (VA), to enable the National Verifier to perform eligibility verification or recertification for individuals applying for Lifeline support.

8. Tribal Nations—To Tribal Nations to perform eligibility verification or recertification for individuals applying for Lifeline support and to obtain enrollment and other selected reports.

9. Service Providers—To service providers who have been designated as ETCs in order to confirm an individual's eligibility and conduct recertification (where the National Verifier, State, or USAC are not responsible for confirming eligibility and/or conducting recertification), complete benefit transfer requests, facilitate the provision of service, allow for the Service Provider to receive reimbursement through the Lifeline Program, and obtain enrollment and other selected reports.

10. FCC Enforcement Actions—When a record in this system involves an informal complaint filed alleging a violation of FCC rules and regulations by an applicant, licensee, certified or regulated entity, or an unlicensed person or entity, the complaint may be provided to the alleged violator for a response. Where a complainant in filing his or her complaint explicitly requests confidentiality of his or her name from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint.

11. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of that individual.

12. Government-Wide Program Management and Oversight—To the National Archives and Records Administration (NARA) for use in its records inspections; to the Government Accountability Office (GAO) for oversight purposes; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

13. Income and Program Eligibility Records—To the appropriate Federal and/or State authorities for the purposes of determining whether a household may participate in the Lifeline Program.

14. Law Enforcement and Investigation—To disclose pertinent information to appropriate Federal, State, or local agencies, authorities, and officials responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of a civil or criminal statute, law, regulation, or order, including but not limited to notifying the Internal Revenue Service (IRS) to investigate income eligibility verification.

15. Adjudication and Litigation—To the Department of Justice (DOJ), in a proceeding before a court, or other administrative or adjudicative body before which the FCC is authorized to appear, when (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and the use of such records by DOJ or the FCC is deemed by the FCC to be relevant and necessary to the litigation.

16. Breach Notification—To appropriate agencies, entities (including USAC), and persons when: (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

17. Assistance to Federal Agencies and Entities—To another Federal agency or Federal entity or USAC, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

18. Computer Matching Program Disclosure—To Federal, State, and local agencies, and USAC, their employees, and agents for the purpose of conducting computer matching programs as regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a).

19. Prevention of Fraud, Waste, and Abuse Disclosure—To Federal agencies, non-Federal entities, their employees, and agents (including contractors, their agents or employees; employees or contractors of the agents or designated agents); or contractors, their employees or agents with whom the FCC or USAC has a contract, service agreement, cooperative agreement, or computer matching agreement for the purpose of: (1) Detection, prevention, and recovery of improper payments; (2) detection and prevention of fraud, waste, and abuse in Federal programs administered by a Federal agency or non-Federal entity; (3) detection of fraud, waste, and abuse by individuals in their operations and programs, but only to the extent that the information shared is necessary and relevant to verify pre-award and prepayment requirements prior to the release of Federal funds, prevent and recover improper payments for services rendered under programs of the FCC or of those Federal agencies and non-Federal entities to which the FCC or USAC provides information under this routine use.

20. Information Sharing Environment Disclosure—To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, or cooperative agreement with the FCC or USAC, when necessary to accomplish an agency function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function. Individuals who provide information under these routine use conditions are subject to Privacy Act requirements and disclosure limitations imposed on the Commission.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

The information pertaining to the Lifeline Program includes electronic records, files, data, paper documents, records, and may include audio recordings of calls. Records are maintained in secure, limited access areas. Physical entry by unauthorized persons is restricted through use of locks, passwords, and other security measures. Both USAC and its contractors will jointly manage the electronic data housed at USAC and at the contractors' locations. Paper documents and other physical records (*i.e.,* tapes, compact discs, etc.) will be kept in locked, controlled access areas. Paper documents submitted by applicants to the Lifeline Program will be digitized, and paper copies will be immediately destroyed.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Information in the Lifeline Program system of records may be retrieved by various identifiers, including, but not limited to the individual's name, last four digits of the Social Security Number (SSN), Tribal identification number, date of birth, phone number, residential address, and Lifeline subscriber identification number.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The National Archives and Records Administration (NARA) has not established a records schedule for the information in the Lifeline Program system of records. Consequently, until NARA has approved a records schedule, USAC will maintain all information in the Lifeline Program system of records in accordance with NARA records management directives. The *2012 Lifeline Reform Order* states that information in the Lifeline Program is maintained for ten years after the consumer de-enrolls from the Lifeline Program. *See Lifeline and Link Up Reform and Modernization et al.,* Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6740, para. 195 (2012). Disposal of obsolete or out-of-date paper documents and files is by shredding only. Electronic data, files, and records are destroyed by electronic erasure.

**ADMINSTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

The electronic records, data, and files are maintained in the FCC and the USAC computer network databases, which are protected by the FCC's IT privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal IT privacy standards, including those required by the National Institute of Standard and Technology (NIST) and the Federal Information Security Management System (FISMA). In addition, access to the electronic files is restricted to authorized USAC and contractors' supervisors and staff and to the FCC's IT supervisors and staff and to the IT contractors who maintain these computer databases. Other FCC employees and contractors may be granted access only on a ''need-to-know'' basis. In addition, data in the network servers for both USAC and its contractors will be routinely backed-up. The servers will be stored in secured environments to protect the data.

The paper documents and files are maintained in file cabinets in USAC and the contractors' office suites. The file cabinets are locked when not in use and at the end of the business day. Access to these files is restricted to authorized USAC and its contractors' staffs.

**NOTIFICATION PROCEDURE:**

Individuals wishing to determine whether this system of records contains information about them may do so by writing to the Universal Service Administrative Company (USAC), 700 12th Street NW., Suite 900, Washington, DC 20005; or

Wireline Competition Bureau (WCB), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554; or

Leslie F. Smith, Privacy Manager, Information Technology (IT), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, or email *Leslie.Smith@fcc.gov.*

Individuals must furnish reasonable identification by showing any two of the following: Social security card; driver's license; employee identification card; Medicare card; birth certificate; bank credit card; or other positive means of identification, or by signing an identity statement stipulating that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity and access to records (47 CFR part 0, subpart E).

**RECORD ACCESS PROCEDURES:**

Individuals wishing to request access (and/or amendment) to records about them should follow the Notification Procedure above.

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to request an amendment of records about them should follow the Notification Procedure above.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**HISTORY:**

The FCC last gave full notice of this system of records, FCC/WCB–1, Lifeline Program, by publication in the **Federal Register**, 78 FR 73535 (Dec. 6, 2013).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2017–17131 Filed 8–14–17; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0208]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before October 16, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–0208.

*Title:* Section 73.1870, Chief Operators.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit; Not-for-profit institutions.

*Number of Respondents and Responses:* 18,498 respondents; 36,996 responses.

*Estimated Time per Response:* 0.166–26 hours.

*Frequency of Response:* Recordkeeping requirement; Third party disclosure requirement.

*Total Annual Burden:* 484,019 hours.

*Total Annual Cost:* None.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* The information collection requirements contained in 47 CFR 73.1870 require that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted with the station license. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested parties to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to ensure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2017–17132 Filed 8–14–17; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Supplemental Evidence and Data Request on Mobile Health Technology for Diabetes

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Request for supplemental evidence and data submissions.

**SUMMARY:** The Agency for Healthcare Research and Quality is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review of *Mobile Health Technology for Diabetes,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

**DATES:** *Submission Deadline* on or before September 14, 2017.

**ADDRESSES:**

*Email submissions: SEADS@epc-src.org.*

*Print submissions:*

*Mailing Address:* Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, P.O. Box 69539, Portland, OR 97239

*Shipping Address (FedEx, UPS, etc.):* Portland VA Research Foundation,

Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, 3710 SW U.S. Veterans Hospital Road, Mail Code: R&D 71, Portland, OR 97239

**FOR FURTHER INFORMATION CONTACT:** Ryan McKenna, Telephone: 503–220–8262 ext. 51723 or Email: *SEADS@epc-src.org.*

**SUPPLEMENTARY INFORMATION:** The Agency for Healthcare Research and Quality (AHRQ) has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for Mobile Health Technology for Diabetes. AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Mobile Health Technology for Diabetes,* including those that describe adverse events. The entire research protocol, including the key questions, is also available online at: *http://www.effectivehealthcare.ahrq.gov/index.cfm/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productid=2484.*

This is to notify the public that the EPC Program would find the following information on *Mobile Health Technology for Diabetes* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* please provide a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute ALL Phase II and above clinical trials sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution will be very beneficial to the EPC Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/index.cfm/join-the-email-list1/.*

*The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.*

**The Guiding Questions**

I. Which specific mobile health technology (mHealth) technologies for diabetes self-management have been researched?

II. What are the characteristics (*e.g.,* interoperability, functions, acceptability/usability, connection to electronic health records) of these specific mHealth technologies?

III. What patient outcomes are associated with the use of these specific mHealth technologies?

IV. What are the harms and costs associated with these specific mHealth technologies?

**Sharon B. Arnold,**

*Deputy Director.*

[FR Doc. 2017–17152 Filed 8–14–17; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Head Start Program Information Report.

*OMB No.:* 0970–0427.

*Description:* The Office of Head Start within the Administration for Children and Families, United States Department of Health and Human Services, is proposing to renew authority to collect information using the Head Start Program Information Report (PIR), monthly enrollments, contacts, locations, and reportable conditions. All information is collected through a single system, the Head Start Enterprise System (HSES). The PIR provides information about Head Start and Early Head Start services received by the children and families enrolled in Head Start programs. The information collected in the PIR is used to inform the public about these programs, to make periodic reports to Congress about the status of children in Head Start programs as required by the Head Start Act, and to assist the administration and training/technical assistance of Head Start programs.

*Respondents:* Head Start and Early Head Start program grant recipients.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Head Start Program Information Report (PIR) | 3,267 | 1 | 4 | 13,068 |
| Grantee Monthly Enrollment Reporting | 2,049 | 12 | 0.05 | 1,229 |
| Contacts, Locations & Reportable Conditions | 3,267 | 1 | 0.25 | 817 |

*Estimated Total Annual Burden Hours:* 15,114.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of

Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2017–17192 Filed 8–14–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Title IV–E Foster Care Eligibility Review and Child and Family Service Reviews.

*OMB No.:* 0970–0214.

*Description:* The following five separate activities are associated with this information collection: Foster Care Eligibility Review (foster care review) Program Improvement Plan; Child and Family Services Reviews (CFSR) State agency Statewide Assessment; CFSR On-site Review; CFSR Program Improvement Plan; and Anti-Discrimination Enforcement Corrective Action Plan. The collection of information for review of federal payments to states for foster care maintenance payments (45 CFR 1356.71(i)) is authorized by title IV–E of the Social Security Act (the Act), section 474 [42 U.S.C. 674]. The foster care review systematically checks title IV–E agency compliance in meeting title IV–E eligibility requirements; validates the accuracy of the agency's claims for reimbursement of title IV–E payment made on behalf of children in foster care; and identifies and recovers improper payments. The collection of information for review of state child and family services programs (45 CFR 1355.33(b), 1355.33(c) and 1355.35(a)) is to determine whether such programs are in substantial conformity with state plan requirements under parts B and E of the Act and is authorized by section 1123(a) [42 U.S.C 1320a–1a] of the Act. The CFSR looks at the outcomes related to safety, permanency and well-being of children served by the child welfare system and at seven systemic factors that support the outcomes. Section 474(d) of the Act [42 U.S.C 674] deploys enforcement provisions (45 CFR 1355.38(b) and (c)) for the requirements at section 4371(a)(18) [42 U.S.C 671], which prohibit the delay or denial of foster and adoptive placements based on the race, color, or national origin of any of the individuals involved. The enforcement provisions include the execution and completion of corrective action plans when a state is in violation of section 471(a)(18) of the Act. The information collection is needed: (1) To ensure compliance with title IV–E foster care eligibility requirements; (2) to monitor state plan requirements under titles IV–B and IV–E of the Act, as required by federal statute; and (3) to enforce the title IV–E anti-discrimination requirements through state corrective action plans. The resultant information will allow ACF to determine if states are in compliance with state plan requirements and are achieving desired outcomes for children and families, help ensure that claims by states for title IV–E funds are made only on behalf of title IV–E eligible children, and require states to revise applicable statutes, rules, policies and procedures, and provide proper training to staff, through the development and implementation of corrective action plans. These reviews not only address compliance with eligibility requirements but also assist states in enhancing the capacities to serve children and families. In computing the number of burden hours for this information collection, ACF based the annual burden estimates on ACF's and states' experiences in conducting reviews and developing program improvement plans.

*Respondents:* State Title IV–B and Title IV–E Agencies.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| 45 CFR 1356.7 (i) Program Improvement Plan (IV–E review) | 1 | 1 | 120 | 120 |
| 45 CFR 1366.33 (b) Statewide Assessment (CFSR). | 14 | 1 | 120 | 1680 |
| 45 CFR 1355.33 (c) On-site Review (CFSR) | 14 | 1 | 1,186 | 16,604 |
| 45 CFR 1355.35 (a) Program Improvement Plan (CFSR) | 14 | 1 | 300 | 4,200 |
| 45 CFR 1355.38 (b) and (c) Corrective Action | 1 | 1 | 780 | 780 |

*Estimated Total Annual Burden Hours:* 23,384.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2017–17193 Filed 8–14–17; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Advance Planning Document (APD) Process.

*OMB No.:* 0970–0417.

*Description:* The Advance Planning Document (APD) process, established in the rules at 45 CFR part 95, subpart F, is the procedure by which states request and obtain approval for Federal Financial Participation (FFP) in their cost of acquiring Automated Data Processing (ADP) equipment and services.

State child support agencies are required to establish and operate a federally approved statewide ADP and information retrieval system to assist in child support enforcement. States are required to submit an initial APD, containing information to assist the Secretary of the Department of Health and Human Services (HHS) in determining if the state computerized support enforcement project planning and implementation meets federal certification requirements needed for the approval of FFP. States are then required to submit annual APD updates to provide project status updates to HHS, as well as, to request ongoing FFP for systems development, enhancements, operations and maintenance. As-Needed APDs are also submitted to acquire FFP when major milestone are missed or significant changed to project schedules occur. Based on an assessment of the information provided in APD, states that do not meet the federal requirements necessary for approval are required to conduct periodic independent verification and validation (IV&V) services for high risk project oversight.

In addition to the APDs providing HHS with the information necessary to determine the allowable level of federal funding for state systems projects, states also submit associated procurement and data security documents, such as the request for proposals (RFPs), contracts, contract amendments, and the biennial security review reports.

*Respondents:* State Child Support Agencies.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| RFP and Contract | 54 | 1.5 | 4 | 324 |
| Emergency Funding Request | 5 | .1 | 2 | 1 |
| Biennial Reports | 54 | 1 | 1.50 | 81 |
| Advance Planning Document | 34 | 1.2 | 120 | 4,896 |
| Operational Advance Planning Document | 20 | 1 | 30 | 600 |
| Independent Verification and Validation (ongoing) | 3 | 4 | 10 | 120 |
| Independent Verification and Validation (semiannually) | 1 | 2 | 16 | 32 |
| Independent Verification and Validation (quarterly) | 1 | 4 | 30 | 120 |
| System Certification | 1 | 1 | 240 | 240 |

*Estimated Total Annual Burden Hours:* 6,414.

**Additional Information**

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

**OMB Comment**

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2017–17196 Filed 8–14–17; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

### Reallotment of FY 2017 Funds

**AGENCY:** Administration on Intellectual and Developmental Disabilities (AIDD), Administration on Disabilities (AoD), Administration for Community Living (ACL), HHS.

**ACTION:** Notice of reallotment of FY 2017 funds.

**SUMMARY:** AIDD intends to reallot funds under authority of the Development Disabilities Assistance and Bill of Rights Act of 2000 which states: ''If the Secretary determines that an amount of an allotment to a State for a period (of a fiscal year or longer) will not be required by the State during the period for the purpose for which the allotment was made, the Secretary may reallot the amount.''

AIDD will be reallotting FY 2017 funds awarded to the State Council on Developmental Disabilities (SCDD) and the Protection & Advocacy (P&A) agency located within the Commonwealth of Puerto Rico. This determination is based on the limited reported expenditures and requests for reimbursement over the last several years from the SCDD and P&A in the Commonwealth of Puerto Rico.

The Puerto Rico SCDD will have up to $1.9 million rescinded and proportionately redistributed to the remaining SCDDs. SCDDs that receive FY 2017 realloted funds will have through the end of FY 2018 to obligate the funds and until the end of FY 2019 to liquidate the funds.

The Puerto Rico P&A will have up to $550,000 rescinded and proportionately redistributed to the remaining P&As. P&As that receive the FY 2017 funds will have through the end of FY 2019 to spend the funds.

Realloted funds for both the SCDDs and the P&As must be used according to

the terms as outlined in the FY 2017 Notice of Award for each program.

**DATES:** Funds will be realloted after September 1, 2017 and before September 30, 2017.

**ADDRESSES:** The reallotment amounts to SCDDs and P&As can be found at *https://www.acl.gov/node/110.*

**FOR FURTHER INFORMATION CONTACT:** Andrew Morris, Office of Policy and Development, Center on Policy & Evaluation, Administration for Community Living, 330 C St. SW., Washington, DC 20201. Telephone (202) 795–7408. Email *andrew.morris@acl.hhs.gov.* Please note the telephone number is not toll free. This document will be made available in alternative formats upon request. Written correspondence can be sent to Administration for Community Living, U.S. Department of Health and Human Services, 330 C St. SW., Washington, DC 20201.

Dated: August 4, 2017.

**Melissa Ortiz,**

*Commissioner, Administration on Disabilities.*

[FR Doc. 2017–17195 Filed 8–14–17; 8:45 am]

**BILLING CODE 4154–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2017–N–1197]**

### The Food and Drug Administration's Proposed Method for Adjusting Data on Antimicrobials Sold or Distributed for Use in Food-Producing Animals Using a Biomass Denominator; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability for public comment of a proposed method for applying a food animal biomass denominator to annual data on antimicrobials sold and distributed for use in food animals in the United States. This method will allow us to obtain a corrected estimate of antimicrobial drug sales relative to the animal population potentially being treated with those drugs, thereby lending further context to the antimicrobial sales data we are collecting and analyzing.

**DATES:** Submit either electronic or written comments on the proposed method by November 13, 2017.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 13, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of November 13, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2017–N–1197 for ''FDA's Proposed Method for Adjusting Data on Antimicrobials Sold or Distributed for Use in Food-Producing Animals Using a Biomass Denominator.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the proposed method to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Persons with access to the Internet may obtain the proposed method at either *https://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeAct*

*ADUFA/ucm042896.htm* or in this docket at *https://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Sujaya Dessai, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5671, *sujaya.dessai@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Animal drug sponsors are required to report annually to FDA the amount of antimicrobials sold or distributed for use in food-producing animals and provide species-specific estimates of the percentage of their drug product sales for use in any of the four major food-producing species (cattle, swine, chickens, and turkeys) identified on the approved product label (21 CFR 514.87(c)). FDA is announcing the availability of a proposed method for using a biomass denominator to adjust these sales data. The proposed method will provide estimates of annual antimicrobial drug sales adjusted for the size of the animal population (the animal biomass of each such species) potentially being treated with those drugs. The adjusted estimates will provide insight into broad shifts in the amount of antimicrobials sold for use in food-producing animals and give the Agency a more nuanced view of why sales increase or decrease over time in a manner that is specific to U.S. animal production. Such analysis will also support our ongoing efforts to encourage the judicious use of antimicrobials in food-producing animals to help ensure the continued availability of safe and effective antimicrobials for animals and humans.

Application of a biomass denominator to normalize antimicrobial sales data has been used internationally. In developing this proposal for applying a biomass denominator to antimicrobial sales data in the United States, FDA has considered methods being utilized and discussed in other countries. FDA's intent in publishing the proposed method is to initiate discussion with stakeholders on the biomass correction method FDA is considering, and to seek comment on the methodology and the utility of this type of data analysis.

Dated: August 10, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017–17206 Filed 8–14–17; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Drug Development.

*Date:* September 15, 2017.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway, Suite 2W200, 7201 Wisconsin Ave., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *parsadaniana@nia.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel; AD Sequencing Project Data Analysis.

*Date:* September 20, 2017.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway, Suite 2W200, 7201 Wisconsin Ave., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *parsadaniana@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 8, 2017.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–17155 Filed 8–14–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Environmental Health Sciences Review Committee.

*Date:* August 29–30, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Imperial Hotel and Convention Center, 4700 Emperor Boulevard, Durham, NC 27703.

*Contact Person:* Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; 1 P30 Core Center Conflict Review.

*Date:* August 30, 2017.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Imperial Hotel and Convention Center, 4700 Emperor Boulevard, Durham, NC 27703.

*Contact Person:* Leroy Worth, Ph.D., Scientific Review Officer Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety

Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 9, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–17157 Filed 8–14–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Drug Abuse. The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Drug Abuse.

*Date:* September 6, 2017.

*Closed:* 9:00 a.m. to 10:15 a.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Open:* 10:30 a.m. to 5:00 p.m.

*Agenda:* This portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Contact Person:* Susan R.B. Weiss, Ph.D., Director, Division of Extramural Research, Office of the Director, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, NSC, Room 5274, MSC 9591, Rockville, MD 20892, 301–443–6487, *sweiss@nida.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: August 9, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–17156 Filed 8–14–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, PAR Panel: Linking Provider Recommendation to Adolescent HPV Uptake.

*Date:* September 12, 2017.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Tasmeen Weik, DRPH, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, 301–827–6480, *weikts@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 9, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–17154 Filed 8–14–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1739]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 31, 2017.

**Roy E. Wright,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Arizona: Maricopa | City of Phoenix (17–09–1054P). | The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003. | Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003. | *http://www.msc.fema.gov/lomc* | Nov. 10, 2017 .... | 040051 |
| Indiana: Marion .... | City of Indianapolis (17–05–3161P). | The Honorable Joe Hogsett, Mayor, City of Indianapolis, 2501 City-County Building, 200 East Washington Street, Indianapolis, IN 46204. | City Hall, 1200 Madison Avenue, Suite 100, Indianapolis, IN 46225. | *http://www.msc.fema.gov/lomc* | Oct. 26, 2017 ..... | 180159 |
| Missouri: St. Louis | City of Chesterfield (17–07–0810P). | The Honorable Bob Nation, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017. | Chestfield Municipal Court, 690 Chesterfield Parkway West, Chesterfield, MO 63017. | *http://www.msc.fema.gov/lomc.* | Oct. 17, 2017 ..... | 290896 |
| Nebraska: Buffalo | City of Kearney (17–07–1116P). | The Honorable Stanley Clouse, Mayor, City of Kearney, 18 East 22nd Street, Kearney, NE 68847. | City Hall, 18 East 22nd Street, Kearney, NE 68847. | *http://www.msc.fema.gov/lomc* | Oct. 25, 2017 ..... | 310016 |
| Tennessee: Hamilton. | City of Chattanooga (17–04–1553P). | The Honorable Andy Berke, Mayor, City of Chattanooga, 101 East 11th Street, Chattanooga, TN 37402. | Planning Department, 1250 Market Street, Chattanooga, TN 37402. | *http://www.msc.fema.gov/lomc* | Oct. 31, 2017 ..... | 470072 |
| Wisconsin: Brown | Village of Bellevue (17–05–2419P). | Mr. Steve Soukup, President, Bellevue Village Board, Village of Bellevue, 2828 Allouez Avenue, Bellevue, WI 54311. | Village Hall, 2828 Allouez Avenue, Bellevue, WI 54311. | *http://www.msc.fema.gov/lomc* | Oct. 20, 2017 ..... | 550627 |

[FR Doc. 2017–16949 Filed 8–14–17; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–ES–2017–N080; FXES11140400000–178–FF04E00000]**

### Endangered Species Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The Act requires that we invite public comment before issuing these permits.

**DATES:** We must receive written data or comments on the applications at the address given in **ADDRESSES** by September 14, 2017.

**ADDRESSES:** *Reviewing Documents:* Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).

*Submitting Comments:* If you wish to comment, you may submit comments by any one of the following methods:

- *U.S. mail or hand-delivery:* U.S. Fish and Wildlife Service's Regional Office (see above).
- *Email: permitsR4ES@fws.gov.*

Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Karen Marlowe, Permit Coordinator, (404) 679–7097 (telephone) or (404) 679–7081 (fax).

**SUPPLEMENTARY INFORMATION:** We invite review and comment from local, State, and Federal agencies and the public on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* Act), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. With some exceptions, the Act prohibits activities with listed species unless a Federal permit is issued that allows such activities. The Act requires that we invite public comment before issuing these permits.

#### Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### Permit Applications

| Permit application No. | Applicant | Species/numbers | Location | Activity | Type of take | Permit action |
|---|---|---|---|---|---|---|
| TE 38792A–2 ..... | U.S. Army, Fort Gordon, Fort Gordon, GA. | Red-cockaded woodpecker (*Picoides borealis*)/Unlimited. | Ft. Gordon, Ft. Stewart, and Ft. Benning, GA; Apalachicola and Ocala National Forests, FL; Fort Bragg, NC. | Population enhancement, management, and monitoring. | Construct and install artificial nest cavities and restrictors; monitor nest cavities; capture, band, and translocate. | Renewal. |
| TE 55292B–1 ..... | University of Florida, Gainesville, FL. | Everglade snail kite (*Rostrhamus sociabilis plumbeus*)/Unlimited. | Florida ..... | Demographic and movement studies. | Capture, band, mark, radio-tag, measure, collect feather samples, release, and monitor. | Renewal. |
| TE 069280–5 ..... | Alabama Department of Transportation, Montgomery, AL. | Alabama beach mouse (*Peromyscus polionotus ammobates*)/Unlimited. | Alabama ..... | Presence/absence surveys. | Capture, examine, and release. | Renewal. |
| TE 28975C–0 ..... | Bruce Stallsmith, Univ. of Alabama in Hunstville, Huntsville, AL. | Palezone shiner (*Notropis albizonatus*)/50 individuals. | Alabama, Kentucky ... | DNA analyses for research on genetic diversity. | Capture, collect fin clips, and release. | New. |
| TE 055241–3 ..... | Robert Montgomery, Dare County Bomb Range, Stumpy Point, NC. | Red-cockaded woodpecker (*Picoides borealis*)/Unlimited. | North Carolina ..... | Population enhancement, management, and monitoring. | Construct and install artificial nest cavities and restrictors; monitor nest cavities; capture, band, and translocate. | Renewal. |

| Permit application No. | Applicant | Species/numbers | Location | Activity | Type of take | Permit action |
|---|---|---|---|---|---|---|
| TE 30733C–0 ..... | Marissa Thalken, Aurora, CO. | Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), and northern long-eared bat (*M. septentrionalis*)/Unlimited. | Connecticut, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Vermont, West Virginia, and Wisconsin. | Presence/absence surveys. | Mist-net, harp trap, handle, band, radio-tag, wing-punch, and release. | New. |
| TE 063179–6 ..... | Edwards-Pitman Environmental, Inc., Smyrna, GA. | Amber darter (*Percina antesella*), blue shiner (*Cyprinella caerulea*), Cherokee darter (*Etheostoma scotti*), Conasauga logperch (*Percina jenkinsi*), Etowah darter (*Etheostoma etowahae*), goldline darter (*Percina aurolineata*), snail darter (*Percina tanasi*), Alabama moccasinshell (*Medionidus acutissimus*), Altamaha spinymussel (*Elliptio spinosa*), Carolina heelsplitter (*Lasmigona decorata*), Choctaw bean (*Villosa choctawensis*), Coosa moccasinshell (*Medionidus parvulus*), fat threeridge (*Amblema neislerii*), fine-lined pocketbook (*Lampsilis altilis*), fuzzy pigtoe (*Pleurobema strodeanum*), Georgia pigtoe (*Pleurobema hanleyianum*), Gulf moccasinshell (*Medionidus penicillatus*), narrow pigtoe (*Fusconaia escambia*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), orangenacre mucket (*Lampsilis perovalis*), oval pigtoe (*Pleurobema pyriforme*), ovate clubshell (*Pleurobema perovatum*), purple bankclimber (*Elliptoideus sloatianus*), round ebonyshell (*Fusconaia rotulata*), shiny-rayed pocketbook (*Lampsilis subangulata*), southern acornshell (*Epioblasma othcaloogensis*), southern clubshell (*Pleurobema decisum*), southern combshell (*Epioblasma penita*), southern kidneyshell (*Ptychobranchus jonesi*), southern pigtoe (*Pleurobema georgianum*), southern sandshell (*Hamiota australis*), Suwanee moccasinshell (*Medionidus walkeri*), tapered pigtoe (*Fusconaia burkei*), triangular kidneyshell (*Ptychobranchus greenii*), and upland combshell (*Epioblasma metastriata*)/Unlimited. | Florida, Georgia, North Carolina, and South Carolina. | Presence/absence surveys. | Capture, identify, release, and salvage shells. | Renewal and amendment. |

| Permit application No. | Applicant | Species/numbers | Location | Activity | Type of take | Permit action |
|---|---|---|---|---|---|---|
| TE 12169B–1 ..... | Mitigation Management, Atlanta, GA. | Amber darter (*Percina antesella*), blue shiner (*Cyprinella caerulea*), Cherokee darter (*Etheostoma scotti*), Conasauga logperch (*Percina jenkinsi*), Etowah darter (*Etheostoma etowahae*), goldline darter (*Percina aurolineata*), and snail darter (*Percina tanasi*)/Unlimited. | Georgia ..... | Presence/absence surveys. | Capture, identify, and release. | Renewal and amendment. |
| TE 34387C–0 ..... | U.S. Fish and Wildlife Service, Blacksburg, VA. | Oyster mussel (*Epioblasma capsaeformis*)/240 individuals. | Tennessee and Virginia. | Captive conditioning and spawning research. | Collect, transport, hold in captivity for 90 days, tag, and release. | New. |
| TE 34429C–0 ..... | Nancy Buschhaus, Univ. of Tennessee at Martin, Martin, TN. | Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), and northern long-eared bat (*M. septentrionalis*)/Unlimited. | Tennessee ..... | Presence/absence survey and population demographics study. | Capture with mist-nets, collect fecal samples, and release. | New. |

**Authority:** We provide this notice under section 10(c) of the Act.

Dated: June 1, 2017.

**Guy Schein,**

*Acting Assistant Regional Director, Ecological Services, Southeast Region.*

[FR Doc. 2017–17208 Filed 8–14–17; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2017–N091; FXES11130800000–178–FF08EVEN00]**

### Receipt of Application for Incidental Take Permit; Low-Effect Habitat Conservation Plan for BAE Hollister Test Facility, San Benito County, California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit application; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received a request from BAE Systems Land and Armaments L.P., for an incidental take permit under the Endangered Species Act of 1973, as amended. The permit would authorize take of the federally endangered San Joaquin kit fox and the threatened California red-legged frog and California tiger salamander, incidental to otherwise lawful soil remediation activities associated with the BAE Hollister Test Facility Habitat Conservation Plan. We invite public comment.

**DATES:** Written comments should be received on or before September 14, 2017.

**ADDRESSES:** You may download a copy of the draft habitat conservation plan and draft low-effect screening form and environmental action statement on the internet at *http://www.fws.gov/ventura/,* or you may request copies of the documents by U.S. mail to our Ventura office, or by phone (see **FOR FURTHER INFORMATION CONTACT**). Please address written comments to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

**FOR FURTHER INFORMATION CONTACT:** Christopher Diel, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service, have received a request from BAE Systems Land and Armaments L.P., for an incidental take permit under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* Act). The applicant has agreed to follow all of the conditions in the habitat conservation plan for the project. The permit would authorize take of the federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and the threatened California red-legged frog (*Rana draytonii*) and California tiger salamander (*Ambystoma californiense*), incidental to otherwise lawful activities associated with the BAE Hollister Test Facility Habitat Conservation Plan (HCP). We invite public comment on the application and related documents.

#### Background

The San Joaquin kit fox was listed by the Service as endangered on January 24, 1997. The California red-legged frog and California tiger salamander were listed by the Service as threatened on May 23, 1996 and August 4, 2004, respectively. Section 9 of the Act and its implementing regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. ''Incidental Take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are, respectively, in the Code of Federal Regulations at 50 CFR 17.32 and 17.22. Under the Act, protections for federally listed plants differ from the protections afforded to federally listed animals. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. All species included in the incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The applicants have applied for a permit for incidental take of the San Joaquin kit fox, California red-legged frog, and California tiger salamander. The potential taking would occur by activities associated with the soil remediation activities at the BAE Hollister Test Facility in suitable habitat for the covered species.

#### Preliminary Determination

The Service has made a preliminary determination that issuance of the permit is neither a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.;* NEPA), nor will it individually or cumulatively have more than a negligible effect on the species

covered in the HCP. Therefore, the permit qualifies for a categorical exclusion under NEPA.

**Public Comments**

If you wish to comment on the permit applications, plans, and associated documents, you may submit comments by any one of the methods in **ADDRESSES.**

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: August 9, 2017.

**Stephen P. Henry,**

*Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.*

[FR Doc. 2017–17205 Filed 8–14–17; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

**[Docket ID BSEE–2017–0002; 17XE1700DX EEEE500000 EX1SF0000.DAQ000; OMB Control Number 1014–0022]**

### Agency Information Collection Activities: Oil and Gas and Sulfur Operations in the OCS—General

**ACTION:** Notice; request for comments.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in BSEE's regulations concerning, *Oil and Gas and Sulfur Operations in the OCS—General.* This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

**DATES:** You must submit comments by September 14, 2017.

**ADDRESSES:** Submit comments by either fax (202) 395–5806 or email (*OIRA_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–0022). Please provide a copy of your comments to BSEE by any of the means below.

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2017–0002 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference ICR 1014–0022 in your comment and include your name and return address.

**FOR FURTHER INFORMATION CONTACT:** Nicole Mason, Regulations and Standards Branch, (703) 787–1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR part 250, subpart A, *Oil and Gas and Sulfur Operations in the OCS—General.*

*Form(s):* BSEE–0132, BSEE–0143, BSEE–1832.

*OMB Control Number:* 1014–0022.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act at 43 U.S.C. 1334 authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. A request for approval required in 30 CFR 250.171 is subject to cost recovery, and BSEE regulations specify service fees for these requests in 30 CFR 250.125.

The Federal Water Pollution Control Act (33 U.S.C. 1331(j)(1)(C)) authorizes the President to adopt regulations that establish procedures, methods and equipment requirements to prevent oil spills and other hazardous substance discharges from offshore and other facilities. The regulatory authority for offshore facilities has been delegated to the Secretary and further delegated by the Secretary to BSEE. The regulations at 30 CFR part 250, subpart A, require compliance with all applicable BSEE regulations, including those intended to prevent or reduce discharges of oil and other hazardous substances. These authorities and responsibilities are among those delegated to BSEE. The regulations at 30 CFR part 250, subpart A, concern the general regulatory requirements of oil, gas, and sulfur operations in the OCS (including the associated forms), and are the subject of

this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information collected under the Subpart A regulations to ensure that operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources. Specifically, we use the information collected to:

- Review records of formal crane operator and rigger training, crane operator qualifications, crane inspections, testing, and maintenance to ensure that lessees/operators perform operations in a safe and workmanlike manner and that equipment is maintained in a safe condition. The BSEE also uses the information to make certain that all new and existing cranes installed on OCS fixed platforms must be equipped with anti-two block safety devices, and to assure that uniform methods are employed by lessees for load testing of cranes.
- Review welding plans, procedures, and records to ensure that welding is conducted in a safe and workmanlike manner by trained and experienced personnel.
- Provide lessees/operators greater flexibility to comply with regulatory requirements through approval of alternative equipment or procedures and departures to regulations if they demonstrate equal or better compliance with the appropriate performance standards.
- Ensure that injection of gas promotes conservation of natural resources and prevents waste.
- Record the agent and local agent empowered to receive notices and comply with regulatory orders issued.
- Provide for orderly development of leases through the use of information to determine the appropriateness of lessee/operator requests for suspension of operations, including production.
- Improve safety and environmental protection on the OCS through collection and analysis of accident reports to ascertain the cause of the accidents and to determine ways to prevent recurrences.
- Ascertain when the lease ceases production or when the last well ceases production in order to determine the 180th day after the date of completion of the last production. The BSEE will use this information to efficiently maintain the lessee/operator lease status.
- Allow lessees/operators who exhibit unacceptable performance an incremental approach to improving their overall performance prior to a final decision to disqualify a lessee/operator or to pursue debarment proceedings through the execution of a performance improvement plan (PIP). The Subpart A regulations do not address the actual process that we will follow in pursuing the disqualification of operators under §§ 250.135 and 250.136; however, our internal enforcement procedures include allowing such operators to demonstrate a commitment to acceptable performance by the submission of a PIP.

The forms associated with this information collection request are as follows:

The BSEE Environmental Compliance Division has decided to discontinue use of BSEE Form-0011, *Internet Based Safety and Environmental Enforcement Reporting System (Isee),* due to an evolving program and changes in management. The information submitted under § 250.193 instructs the public on what information and where to submit possible violations making the form obsolete.

Form BSEE–1832, *Incident(s) of Noncompliance (INCs),* is used to determine that respondents have corrected all incident(s) of noncompliance identified during inspections. Everything on the INC form is filled out by a BSEE inspector/representative. Industry is only required to sign this form upon receipt and respond to BSEE when each INC has been corrected, no later than 14 days from the date of issuance.

Form BSEE–0132, *Hurricane and Tropical Storm Evacuation and Production Curtailment Statistics,* is used in the Gulf of Mexico OCS Region (GOMR) to obtain general information, such as company name, contact, date, time, telephone number; as well as number of platforms and drilling rigs evacuated and not evacuated, and production shut-in statistics for oil (BOPD) and gas (MMSCFD).

Form BSEE–0143, *Facility/Equipment Damage Report,* is used to assess initial damage to a structure or equipment and then be aware of changes until the damaged structure or equipment is returned to service, as well as to assess the production rate at time of shut-in (BPD and/or MMCFPD), cumulative production shut-in (BPD and/or MMCFPD), and estimated time to return to service (in days).

Most responses are mandatory, while others are required to obtain or retain benefits, or are voluntary. No questions of a sensitive nature are asked. The BSEE protects information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection,* and 30 CFR part 252, *OCS Oil and Gas Information Program.*

*Frequency:* On occasion, daily, weekly, monthly, and varies by section.

*Description of Respondents:* Potential respondents comprise Federal OCS oil, gas, or sulfur lessees and/or operators and holders of pipeline rights-of-way.

*Estimated Reporting and Recordkeeping Hour Burden:* The estimated annual hour burden for this information collection is a total of 99,866 hours and $222,915 non-hour costs. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

| Citation 30 CFR 250 Subpart A; related forms/ NTLs | Reporting or recordkeeping requirement* | Non-Hour cost burdens | | |
|---|---|---|---|---|
| | | Hour burden | Average number of annual responses | Annual burden hours (rounded) |
| 104; Form BSEE–1832 ..... | Appeal orders or decisions; appeal INCs ..... | Exempt under 5 CFR 1320.4(a)(2), (c) | | 0 |
| 107(c) ..... | Request waiver by demonstrating the use for BAST would not be practicable. | 8 ..... | 2 justifications ..... | 16 |

BURDEN BREAKDOWN—Continued

| Citation 30 CFR 250 Subpart A; related forms/ NTLs | Reporting or recordkeeping requirement* | Non-Hour cost burdens | | |
|---|---|---|---|---|
| | | Hour burden | Average number of annual responses | Annual burden hours (rounded) |
| 108(e) | Retain records of design and construction for life of crane, including installation records for any anti-two block safety devices; all inspection, testing, and maintenance for at least 4 years; crane operator and all rigger personnel qualifications for at least 4 years; all records must be kept at the OCS fixed platform. | 7 | 2,011 record-keepers | 14,077 |
| 109(a); 110 | Submit welding, burning, and hot tapping plans | 9 | 51 plans | 459 |
| 109(b); 113(c) | Retain welding plan & approval letter, and drawings of safe-welding areas at site; designated person advises in writing that it is safe to weld. | 3 | 948 operations | 2,844 |
| 118; 121; 124 | Apply for injection of gas; use BSEE-approved formula to determine original gas from injected. | 10 | 6 applications | 60 |
| 125; 126 | Cost Recovery Fees, confirmation receipt, etc.; verbal approvals pertaining to fees. | Cost Recovery Fees and related items are covered individually throughout Subpart A | | 0 |
| 130–133 (Form BSEE–1832). | Submit ''green'' response copy of Form BSEE–1832, INC(s), indicating date violations corrected; or submit same info via electronic reporting. | 3 | 2,802 forms | 8,406 |
| 130–133 | Request reconsideration from issuance of an INC | 7 | 274 requests | 1,918 |
| | Request waiver of 14-day response time | 1 | 1,572 waivers | 1,572 |
| | Notify BSEE before returning to operations if shut-in | 1 | 1,356 notices | 1,356 |
| 132(b)(3) | During inspections, make records available as requested by inspectors. | 4 | 4,554 requests | 18,216 |
| 133, NTL | Request reimbursement within 90 days of inspection for food, quarters, and transportation, provided to BSEE representatives. Submit supporting verifications of the meals, such as a meal log w/inspectors signature. | 2 | 2 requests | 4 |
| 135 | Submit PIP under BSEE implementing procedures for enforcement actions. | 40 | 4 plans | 160 |
| 140 | Request various oral approvals not specifically covered elsewhere in regulatory requirements. | 2 | 346 requests | 692 |
| 140(c) | Submit letter when stopping approved flaring with required information. | Burden covered under 30 CFR Part 250, Subpart K (1014–0019) | | 0 |
| 141; 198 | Request approval to use new or alternative procedures, along with supporting documentation if applicable, including BAST not specifically covered elsewhere in regulatory requirements. | 22 | 1,430 requests | 31,460 |
| 142; 198 | Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements, along with supporting documentation if applicable. | 4 | 405 requests | 1,620 |
| 145 | Submit designation of agent and local agent for Regional Supervisor's and/or Regional Director's approval. | 1 | 9 submittals | 9 |
| 150; 151; 152; 154(a) | Name and identify facilities, artificial islands, MODUs, helo landing facilities etc., with signs. | 4 | 597 new/replacement signs. | 2,388 |
| 150; 154(b) | Name and identify wells with signs | 2 | 286 new wells | 572 |

BURDEN BREAKDOWN—Continued

| Citation 30 CFR 250 Subpart A; related forms/ NTLs | Reporting or recordkeeping requirement* | Non-Hour cost burdens | | |
|---|---|---|---|---|
| | | Hour burden | Average number of annual responses | Annual burden hours (rounded) |
| 168; 171; 172; 174; 175; 177; 180(b), (d). | Request suspension of operation or production; submit schedule of work leading to commencement; supporting information; include pay.gov confirmation receipt. | 11 | 105 requests | 1,155 |
| | | $2,123 fee × 105 = $222,915 | | |
| | Submit progress reports on a suspension of operation or production as condition of approval. | 3 | 240 reports | 720 |
| 172(b); 177(a) | Conduct site-specific study; submit results; request payment by another party. No instances requiring this study in several years—could be necessary if a situation occurred such as severe damage to a platform or structure caused by a hurricane or a vessel collision. | 106 | 1 study/report | 106 |
| 177(b), (c), (d) | Various references to submitting new, revised, or modified exploration plan, development/production plan, or development operations coordination document. | Burden covered under BOEM's 30 CFR Part 550, Subpart B (1010–0151) | | 0 |
| 180(a), (h), (i), | Notify and submit report on various lease-holding operations and lease production activities. | 1.5 | 63 reports or notices | 95 |
| 180(e), (j) | Request more than 180 days to resume operations; notify BSEE if operations do not begin within 180 days. | 3<br>0.5 | 3 requests/notifications | 9<br>2 |
| 180(f), (g), (h), (i) | Submit various operation and production data to demonstrate production in paying quantities to maintain lease beyond primary term; notify BSEE when you begin conducting operations beyond its primary term. | 3<br>0.5 | 384 submission/notifications. | 1,152<br>192 |
| 186; NTL | Submit information and reports, as BSEE requires .... | 12 | 202 Submittals | 2,424 |
| 186(a)(3); NTL | Apply to receive administrative entitlements to eWell (electronic/digital form submittals). | Not considered information collection under 5 CFR 1320.3(h)(1) | | 0 |
| 187; 188; 189; 190; 192; NTL. | Report to the District Manager immediately via oral communication and written follow-up within 15-calendar days, incidents pertaining to: fatalities; injuries; LoWC; fires; explosions; all collisions resulting in property or equipment damage >$25K; structural damage to an OCS facility; cranes; incidents that damage or disable safety systems or equipment (including firefighting systems); include hurricane reports such as platform/rig evacuation, rig damage, P/L damage, and platform damage; operations personnel to muster for evacuation not related to weather or drills; any additional information required. If requested, submit copy marked as public information.<br>FOR ALASKA: Report sea ice movement/conditions; start and termination of ice management activities; kicks or unexpected operational issues. Submit a written report within 24 hours after completing ice management activities. | 1.5 Oral<br>4 Written | 505 Oral reports<br>671 Written reports | 758<br>2,684 |
| 187(d) | Report all spills of oil or other liquid pollutants | Burden covered under 30 CFR Part 254 (1014–0007) | | 0 |
| 188(a)(5) | Report to District Manager hydrogen sulfide (H2S) gas releases immediately by oral communication. | Burden covered under 30 CFR Part 250, Subpart D (1014–0018) | | 0 |
| 191 | Submit written statement/Request compensation mileage and services for testimony re: accident investigation. | Exempt under 5 CFR 1320.4(a)(2), (c) | | 0 |

BURDEN BREAKDOWN—Continued

| Citation 30 CFR 250 Subpart A; related forms/ NTLs | Reporting or recordkeeping requirement* | Non-Hour cost burdens | | |
|---|---|---|---|---|
| | | Hour burden | Average number of annual responses | Annual burden hours (rounded) |
| 192 (Form BSEE–0132) ... | Daily report of evacuation statistics for natural occurrence/hurricane (GOMR Form BSEE–0132 (form takes 1 hour)) when circumstances warrant; inform BSEE when you resume production. | 3 ..... | 884 reports or forms ..... | 2,652 |
| 192(b) (Form BSEE–0143) | Use Form BSEE–0143 to submit an initial damage report to the Regional Supervisor. | 3 ..... | 4 forms ..... | 12 |
| 192(b) (Form BSEE–0143) | Use Form BSEE–0143 to submit subsequent damage reports on a monthly basis until damaged structure or equipment is returned to service; immediately when information changes; date item returned to service must be in final report. | 1 ..... | 4 forms ..... | 4 |
| 193 ..... | Report apparent violations or non-compliance ..... | 1.5 ..... | 6 reports ..... | 9 |
| 194(c) ..... | Report archaeological discoveries ..... | 3 ..... | 7 reports ..... | 21 |
| 195 ..... | Notify District Manager within 5 workdays of putting well in production status (usually oral). Follow-up with either fax/email within same 5 day period (burden includes oral and written). | 1 ..... | 2,040 notifications ..... | 2,040 |
| 196 ..... | Request reimbursement of reproduction and processing costs of G&G data/information requested by the Regional Director. | 1 ..... | 1 request ..... | 1 |
| 197(c) ..... | Submit confidentiality agreement ..... | 1 ..... | 1 submittal ..... | 1 |
| Total Burden ..... | | | 21,776 Responses ..... | 99,866 Hours. |
| | | | $222,915 Non-Hour Cost Burden. | |

* In the future, BSEE may require electronic filing of some submissions.

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* We have identified one non-hour cost burden. Requests for a Suspension of Operation or a Suspension of Production (§ 250.171) require a cost recovery fee of $2,123. We have not identified any other non-hour cost burdens associated with this collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.,)* provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.,*) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on March 15, 2017, we published a **Federal Register** notice (82 FR 13846) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB Control Number for the information collection requirements imposed by the 30 CFR 250, Subpart A regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. Between the last collection submitted and this collection, we received eight comments from private citizens. None of the comments received were germane to this collection of information.

*Public Availability of Comments:* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*BSEE Information Collection Clearance Officer:* Nicole Mason, (703) 787–1607.

Dated: July 13, 2017.

**Doug Morris,**

*Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2017–17209 Filed 8–14–17; 8:45 am]

**BILLING CODE 4310–VH–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–584 and 731–TA–1382 (Preliminary)]**

## Uncoated Groundwood Paper From Canada; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–584 and 731–TA–1382 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of uncoated groundwood paper from Canada, provided for in subheadings 4801.00.01, 4802.61.10, 4802.61.20, 4802.61.30, 4802.61.31, 4802.61.60, 4802.62.10, 4802.62.20, 4802.62.30, 4802.62.61, 4802.69.10, 4802.69.20, and 4802.69.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of Canada. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by September 25, 2017. The Commission's views must be transmitted to Commerce within five business days thereafter, or by October 2, 2017.

**DATES:** August 9, 2017.

**FOR FURTHER INFORMATION CONTACT:** Calvin Chang (202–205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on August 9, 2017, by North Pacific Paper Company (''NORPAC''), Longview, WA.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, August 30, 2017, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before August 28, 2017. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 5, 2017, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and

contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: August 9, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–17177 Filed 8–14–17; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1330 (Final)]**

### Dioctyl Terephthalate (DOTP) From Korea; Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of dioctyl terephthalate (''DOTP'') from Korea, provided for in subheading 2917.39.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

**Background**

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted this investigation effective June 30, 2016, following receipt of a petition filed with the Commission and Commerce by Eastman Chemical Company, Kingsport, Tennessee. The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of DOTP from Korea were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 12, 2017 (82 FR 17691). The hearing was held in Washington, DC, on June 13, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on August 9, 2017. The views of the Commission are contained in USITC Publication 4713 (August 2017), entitled *Dioctyl Terephthalate (DOTP) from Korea: Investigation No. 731–TA–1330 (Final).*

By order of the Commission.

Issued: August 9, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–17178 Filed 8–14–17; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman David S. Johanson dissenting.

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory; Committee on Rules of Criminal Procedure

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Criminal Procedure will hold a meeting on October 24, 2017. The meeting will be open to public observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

**DATES:** October 24, 2017.

**TIME:** 9:00 a.m. to 5:00 p.m.

**ADDRESSES:** United States District Court for Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: August 8, 2017.

**Rebecca A. Womeldorf,**

*Rules Committee Secretary.*

[FR Doc. 2017–17147 Filed 8–14–17; 8:45 am]

**BILLING CODE 2210–55–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical Technology Enterprise Consortium

Notice is hereby given that, on June 23, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical Technology Enterprise Consortium (''MTEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Appili Theraputics, Inc., Halifax, Nova Scotia, CANADA; BioTime, Inc., Alameda, CA; Chenega Healthcare Services, LLC, San Antonio, TX; Critical Innovations LLC, Venice, CA; Embody LLC, Norfolk, VA; Kansas State University, Manhattan, KS; NovaHep AB, Gothenburg, SWEDEN; Pulmotect, Inc., Houston, TX; QBiotics Limited, Taringa, Queensland, AUSTRALIA; SIMETRI, Inc., Winter Park, FL; SpherIngenics, Inc., Richmond, VA; Spherium Biomed SL, Barcelona, SPAIN; Techulon, Inc., Blacksburg, VA; The Trustees of Columbia University in the City of New York, New York, NY; The University of Texas Health Science Center at Houston, Houston, TX; UT Health San Antonio, San Antonio, TX; and Vapogenix, Inc., Houston, TX, have been added as parties to this venture.

Also, MedPro Technologies, Inc., San Antonio, TX; MetArmor, Inc., Glen Gardner, NJ; Michigan Technological University, Houghton, MI; and Organovo, Inc., San Diego, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MTEC intends to file additional written notifications disclosing all changes in membership.

On May 9, 2014, MTEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on April 19, 2017. A notice was published in the **Federal**

**Register** pursuant to Section 6(b) of the Act on May 12, 2017 (82 FR 22159).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2017–17161 Filed 8–14–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical CBRN Defense Consortium

Notice is hereby given that, on July 12, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical CBRN Defense Consortium (''MCDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Countervail Corporation, Charlotte, NC; GenArraytion, Inc., Rockville, MD; Prosolia, Inc., Indianapolis, IN; Meso Scale Diagnostics, LLC, Rockville, MD; BioFire Defense, LLC, Salt Lake City, UT; Achaogen, Inc., San Francisco, CA; EpiVax, Inc., Providence, RI; CritiTech Particle Engineering Solutions LLC, Lawrence, KS; Colorado State University, Fort Collins, CO; Auburn University, Auburn, AL; BioCryst Pharmaceuticals, Inc., Durham, NC; and Medigen, Inc., Frederick, MD, have been added as parties to this venture.

Also, Ibis BioSciences Inc., an Abbot Company, Carlsbad, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, MCDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 6, 2016 (81 FR 513).

The last notification was filed with the Department on April 10, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 2, 2017 (82 FR 20488).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2017–17160 Filed 8–14–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Manufacturing Design Innovation Institute

Notice is hereby given that, on June 26, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Digital Manufacturing Design Innovation Institute (''DMDII'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have been added as members to this venture: Lawrence Technological University, Southfield, MI; University of North Carolina at Charlotte, Charlotte, NC; AMI Global, Las Vegas, NV; Amper Technologies, Evanston, IL; Autodesk, San Rafael, CA; C-Labs Corporation, Bellevue, WA; Connected Global Factory (SearchLight), Ann Arbor, MI; Dozuki, San Luis Obispo, CA; E-gineering, Indianapolis, IN; Godwin Global, Charlotte, NC; NarrativeWave, Irvine, CA; Omative, Cincinnati, OH; Quality Tools & Abrasives Inc., Elk Grove Village, IL; SensrTrx, St. Louis, MO; Tulip, Milwaukee, WI; TYGES International, Williamsburg, VA; Universal Technical Resources, Cherry Hill, NJ; Verena Solutions LLC, Chicago, IL; and Warwick Analytics, Los Altos, CA, have been added as parties to this venture.

Also, VTOL, Oak Lawn, IL; Affinegy, Inc., Austin, TX; Allied Plastics, Twin Lakes, WI; RECON Services, East Berlin, PA; Bi-Link, Bloomingdale, IN; Graphicast, Jaffrey, NH; Cummins, Columbus, IN; UL LLC, Chicago, IL; Steel Founders Society of America (SFSA), Crystal Lake, IL; McMaster Carr Supply Chain Company, Elmhurst, IL; Pella Corporation, Pella, IA; ABB, Inc, Bloomfield, CT; Moog, East Aurora, NY; BAE Systems Land & Armaments, L.P. York, PA; Teradyne, North Reading, MA; Westinghouse Electric Company, Cranberry Township, PA; University of Delaware, Newark, DE; and University of Louisville, Louisville, KY, have withdrawn as a parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DMDII intends to file additional written notifications disclosing all changes in membership.

On January 5, 2016, DMDII filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 9, 2016 (81 FR 12525).

The last notification was filed with the Department on January 31, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 16, 2017 (82 FR 14033).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2017–17159 Filed 8–14–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on July 13, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Armaments Consortium (''NAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3D Systems, Inc., Rock Hill, SC; ACTA, Inc., Torrance, CA; Advanced Hydrogen Technologies Corporation, Lenoir, NC; American Plastic Cartridge and Shell, LLC, Philadelphia, PA; Applied Physical Sciences Corp., Groton, CT; APT Research, Inc., Huntsville, AL; Arco Global Services Corp., Ft. Lauderdale, FL; Arete Associates, Huntsville, AL; Avatar Partners, Inc., Huntington Beach, CA; Boston Engineering Corporation, Waltham, MA; BrockTek, LLC, Sierra Vista, AZ; C6I Services Corporation, Chesterfield, NJ; Camco One Industries,

LLC, San Antonio, TX; Cincinnati Automation & Mechatronics, LLC, Beavercreek, OH; Combustion Research and Flow Technology, Inc. (CRAFT Tech), Pipersville, PA; Command Post Technologies, Inc., Suffolk, VA; Cubic Defense Applications, Inc., San Diego, CA; Cyan Systems, Santa Barbara, CA; Doolittle Institute, Inc., Fort Walton Beach, FL; Dynetics Technical Solutions, Inc., Huntsville, AL; Eikon Research, Inc., Huntsville, AL; Enable Tech MFG, LLC, Houston, TX; e-Pack, Inc., Ann Arbor, MI; Eutectix, LLC, Chatham, NJ; Evigia Systems, Inc., Ann Arbor, MI; Exact Solution Scientific Consulting, LLC, Morristown, NJ; General Dynamics Land Systems, Inc., Sterling Heights, MI; Grey Castle Group, LLC, Charlotte, NC; Griffon Aerospace Incorporated, Madison, AL; Helios Remote Sensing Systems, Inc., Rome, NY; Hydroid, Inc., Pocasset, MA; In-Depth Engineering Corporation, Fairfax, VA; InertialWave, Inc., Manhattan Beach, CA; Island Pyrochemical Industries, Mineola, NY; iXblue, Inc., Natick, MA; L–3 Technologies, Inc.—L–3 Advanced Programs, Burlington, MA; L3 Technologies, Inc., ComCept Division, Rockwall, TX; L–3 Technologies, Inc., Insight Technology Division, Londonderry, NH; MEI Micro, Inc., Dallas, TX; Mercury Systems, Inc., Andover, MA; Navus Automation, Inc., Knoxville, TN; nLight, Inc., Vancouver, WA; North Atlantic Industries, Inc., Bohemia, NY; Optics 1, Inc., Bedford, NH; optX Imaging Systems, LLC, Lorton, VA; PeopleTec, Inc., Huntsville, AL; Plasma Processes, Inc., Huntsville, AL; PolyCase Ammunition, LLC, Savannah, GA; Probus Test Systems, Inc., Lincroft, NJ; Pulse Aerospace, LLC, Lawrence, KS; Purdue University, West Lafayette, IN; RDZM, LLC, Arlington, VA; Reactive Metals International, Inc., King of Prussia, PA; Resodyn Corporation, Butte, MT; Riptide Software, Inc., Oviedo, FL; Robotic Research, LLC, Gaithersburg, MD; Sabre Systems, Inc., Warrington, PA; SAFT America, Inc., Cockeysville, MD; SCD.USA Infrared, LLC, West Melbourne, FL; Schafer Aerospace, Inc., Albuquerque, NM; Shell Shock Technologies, Inc., Westport, CT; Shonborn-Becker Systems Inc., Eatontown, NJ; Simulation Technologies, Incorporated, Huntsville, AL; Spear Power Systems, LLC, Lee's Summit, MO; Sub-One Systems, LLC, Tucson, AZ; Trex Enterprises Corporation, San Diego, CA; TROM Technologies, Potlatch, ID; True Velocity, Inc., Garland, TX; Undersea Solutions Group, Panama City Beach, FL; US Strategic, LLC, Saint Louis, MO; Vector ElectroMagnetics, LLC, Beavercreek, OH; and Virginia Tech, Blacksburg, VA, have been added as parties to this venture.

Also, Alytic, Inc., King George, VA; Angel Armor, Fort Collins, CO; CheyTac USA, LLC, Nashville, GA; D&H-Nav Technologies Corporation, Jackson, NJ; GaN Corporation, Huntsville, AL; General Atomics Aeronautical Systems, Inc., San Diego, CA; GPC Engineering Company, Ridgecrest, CA; GuardBot, Inc., Stamford, CT; Ideal Innovations Incorporated, Arlington, VA; Integrated Global Insights, LLC, Burke, VA; International Dynamics Corp., Clermont, FL; L–3 Electron Devices, Williamsport, PA; Logikos, Inc., Fort Wayne, IN; Luna Innovations Incorporated, Roanoke, VA; Nanomaterials Discovery Corporation, Cheyenne, WY; National Nanotechnology Manufacturing Center, Inc., Swainsboro, GA; Paramount Metal Finishing, Linden, NJ; Patriot American Solutions, Rockaway, NJ; pH Matter, LLC, Columbus, OH; Power Design Services, San Jose, CA; Streamline Circuits Corp., Santa Clara, CA; Tech Projects LLC, Honolulu, HI; The ExOne Company, North Huntington, PA; University of Louisiana at Lafayette, Lafayette, LA; West Virginia University Research Corporation, Morgantown, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on April 13, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 2017 (82 FR 22159).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2017–17149 Filed 8–14–17; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—3D PDF Consortium, Inc.

Notice is hereby given that, on July 13, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), 3D PDF Consortium, Inc. (''3D PDF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Technology International, Summerville, SC; and Elysium Co. Ltd., Shizuoka, JAPAN, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and 3D PDF intends to file additional written notifications disclosing all changes in membership.

On March 27, 2012, 3D PDF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2012 (77 FR 23754).

The last notification was filed with the Department on October 25, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 29, 2016 (81 FR 86013).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2017–17151 Filed 8–14–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Spectrum Consortium

Notice is hereby given that, on July 12, 2017, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Spectrum Consortium (''NSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Avcom of Virginia, Inc., N. Chesterfield, VA; Strategic Spectrum

Solutions Corp (S3), Bethesda, MD; Glover 38th Street Holdings LLC, Smithfield, VA; KAB Laboratories, Inc., San Diego, CA; Tektronix, Inc., Beaverton, OR; ORSA Technologies, LLC, Sierra Vista, AZ; DEEPSIG, Inc., Arlington, VA; QRC Technologies, Fredericksburg, VA; Freedom Technologies, Inc., Arlington, VA; Gigatronics, Incorporated, Dublin, CA; Cambium Networks, Inc., Rolling Meadows, IL; Epiq Solutions, Schaumburg, IL; LinQuest Corporation, Los Angeles, CA; Syncopated Engineering, Inc., Ellicott City, MD; Bascom Hunter Technologies, Inc., Baton Rouge, LA; InCadence Strategic Solutions, Manassas, VA; and Long Wave, Inc., Oklahoma City, OK, have been added as parties to this venture.

Also, Hercules Research LLC, Chantilly, WA, has withdrawn from this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSC intends to file additional written notifications disclosing all changes in membership.

On May 24, 2014, NSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 4, 2014 (72 FR 65424).

The last notification was filed with the Department on April 10, 2017. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 12, 2017 (82 FR 22160).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2017–17148 Filed 8–14–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on July 11, 2017, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. (''NCOIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lewis Combs (individual member), Cincinnati, OH, has been added as a party to this venture.

Also, Tata Power SED, Mumbai, INDIA; and beamSmart, Vienna, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on March 13, 2017. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 4, 2017 (82 FR 16420).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2017–17150 Filed 8–14–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Raman I. Popli, M.D.; Decision and Order

On May 4, 2017, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Raman Popli, M.D. (hereinafter, Registrant) of McHenry, Illinois, the holder of Certificate of Registration No. BP7189067. GX 2 (Registration Certificate). The Show Cause Order proposed the revocation of Registrant's Certificate of Registration on the ground that Registrant does ''not have authority to handle controlled substances in the State of Illinois,'' the State in which he is registered. GX 1, at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

As the jurisdictional basis for the proceeding, the Show Cause Order alleged that registration BP7189067, pursuant to which Registrant is authorized to prescribe controlled substances in Schedules II through V, expires on March 31, 2019. *Id.*

As the substantive grounds for the proceeding, the Show Cause Order alleged that Registrant currently lacks ''authority to handle controlled substances in the State of Illinois.'' *Id.* It alleged that, on March 13, 2017, Illinois suspended Registrant's ''authority to prescribe and administer controlled substances.'' *Id.*

The Show Cause Order notified Registrant of his right to request a hearing on the allegation or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2, citing 21 CFR 1301.43. The Show Cause Order also notified Registrant of the opportunity to submit a corrective action plan. *Id.,* citing 21 U.S.C. 824(c)(2)(C).

On May 5, 2017, a DEA Office of Chief Counsel Legal Assistant faxed and mailed ''via USPS First Class Mail'' a copy of the Show Cause Order to Registrant's attorney, Alan Rhine, Esq., at the fax number and business address he provided. GX 5, at 1 (Legal Assistant Declaration dated June 8, 2017) and attachment. The Legal Assistant's Declaration appended emails to and from Registrant's attorney confirming that Registrant authorized him to accept service of documents from the DEA on Registrant's behalf. *Id.* I find that the Government's service of the Show Cause Order on Registrant was legally sufficient.

The Government submitted a Request for Final Agency Action (hereinafter, RFAA) dated June 9, 2017 and an evidentiary record to support the Show Cause Order's allegations. According to the Government's representations in the RFAA, ''more than thirty days have passed since the Order to Show Cause was served on Respondent and no request for hearing has been received by DEA, and . . . no written statement or other correspondence has been filed in lieu of a hearing request.'' RFAA, at 1.

Based on the Government's representations and my review of the record, I find that more than 30 days have now passed since the date of service of the Show Cause Order on Registrant through his attorney, and that neither Registrant, his attorney, nor anyone else purporting to represent him, has requested a hearing or submitted a written statement while waiving his right to a hearing. Accordingly, I find that Registrant has waived his right to a hearing and his right to submit a written statement. 21 CFR 1301.43(d). I therefore issue this Decision and Order based on the record submitted by the Government. 21 CFR 1301.43(e).

**Findings of Fact**

*Registrant's DEA Registration*

Registrant currently holds DEA practitioner registration BP7189067 authorizing him to dispense controlled substances in Schedules II through V. GX 2. This registration expires on March 31, 2019. *Id.*

DEA practitioner registration BP7189067 is assigned to Registrant at ''Dr Raman Popli and Associates, Ltd, 5415 Bull Valley Road, McHenry, IL 60050.'' *Id.*

*The Status of Registrant's State Licenses*

On March 13, 2017, the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation issued an Order suspending Registrant's Illinois Physician and Surgeon License No. 036–104035 and Illinois Controlled Substance License No. 336–064820 pending proceedings before an Administrative Law Judge at the Department of Financial and Professional Regulation and the Medical Disciplinary Board of the State of Illinois. GX 3 (Order, at 1–2).[1] According to the Order, ''the public interest, safety and welfare imperatively require emergency action to prevent the continued practice of Raman Popli, M.D., Respondent, in that Respondent's actions constitute an immediate danger to the public.'' *Id.* (Order, at 1).

**Discussion**

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), ''upon a finding that the registrant . . . has had his State License . . . suspended [or] . . . revoked by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton,* 43 FR 27,616 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term '' 'practitioner' [to] mean[ ] a . . . physician, dentist, . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice . . . .'' 21 U.S.C. 801(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper,* 76 FR at 71,371–72; *Sheran Arden Yeates,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci,* 58 FR 51,104, 51,105 (1993); *Bobby Watts,* 53 FR 11,919, 11,920 (1988); *Blanton,* 43 FR at 27,616.

Under Illinois law, ''[n]o person shall practice medicine . . . without a valid, active license to do so . . . .'' 225 ILCS 60/3 (2017). Further, ''[e]very person who . . . dispenses any controlled substances . . . must obtain a registration issued by the [Illinois] Department of Financial and Professional Regulation in accordance with its rules.'' 720 ILCS 570/302(a).

In this case, the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation took emergency action to suspend Registrant's Physician and Surgeon License and Illinois Controlled Substance License. *Supra.* Consequently, Registrant is not currently authorized to handle controlled substances in the State of Illinois, the State in which he is registered, and he is not entitled to maintain his registration. *Blanton, supra.* Accordingly, I will order this his registration be revoked and that any pending application for the renewal or modification of his registration be denied. 21 U.S.C. 824(a)(3) and 823(f).

**Order**

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BP7189067 issued to Raman I. Popli, M.D., as well as DATA-Waiver Identification No. XP7189067, be, and they hereby are, revoked. I further order that any pending application of Raman I. Popli, M.D., to renew or modify this registration, as well as any other pending application by him for registration in the State of Illinois, be, and it hereby is, denied. This order is effective immediately.[2]

Dated: August 4, 2017.

**Chuck Rosenberg,**

*Acting Administrator.*

[FR Doc. 2017–17146 Filed 8–14–17; 8:45 am]

**BILLING CODE 4410–09–P**

[1] Since the pages in GX 3 are not consecutively paginated, this Decision and Order identifies the relevant document in GX 3 and the relevant page number of that document.

[2] For the same reasons the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation suspended Registrant's Illinois Physician and Surgeon License and Illinois Controlled Substance License, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting Notice

**DATE AND TIME:** The Legal Services Corporation's Finance Committee will meet telephonically on August 21, 2017. The meeting will commence at 12:00 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

**LOCATION:** John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

**PUBLIC OBSERVATION:** Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

**CALL-IN DIRECTIONS FOR OPEN SESSIONS:**

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session telephonic meeting of June 21, 2017
3. Approval of minutes of the Committee's Open Session telephonic meeting of June 26, 2017

4. Discussion regarding recommendations for LSC's Fiscal Year (FY) 2019 budget request
5. Public comment regarding FY 2019 budget request
6. Consider and act on FY 2019 Budget Request *Resolution 2017–XXX*
7. Additional public comment
8. Consider and act on other business
9. Consider and act on adjournment of meeting

**CONTACT PERSON FOR INFORMATION:** Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

**ACCESSIBILITY:** LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: August 11, 2017.

**Katherine Ward,**

*Executive Assistant to the Vice President for Legal Affairs and General Counsel.*

[FR Doc. 2017–17300 Filed 8–11–17; 11:15 am]

**BILLING CODE 7050–01–P**

## LIBRARY OF CONGRESS

### Copyright Royalty Board

**[Docket Nos. 16–CRB–0014 DART–SRF (CO) (2015) and 16–CRB–0022–DART–SRF (FRA) (2015)]**

### Distribution of 2015 DART Sound Recordings Fund Royalties (Copyright Owners and Featured Artists Subfunds)

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

**ACTION:** Notice soliciting comments on motion for partial distribution.

**SUMMARY:** The Copyright Royalty Judges solicit comments on a motion for partial distribution in connection with 2015 DART Sound Recordings Fund royalties.

**DATES:** Comments are due on or before September 14, 2017.

**ADDRESSES:** You may send comments, identified by both docket numbers 16–CRB–0014 DART–SRF (CO) (2015) and 16–CRB–0022–DART–SRF (FRA) (2015),[1] by any of the following methods:

*CRB's electronic filing application:* Submit comments online in eCRB at *https://app.crb.gov/.*

*U.S. mail:* Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

*Overnight service (only USPS Express Mail is acceptable):* Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

*Commercial courier:* Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE., and D Street NE., Washington, DC; or

*Hand delivery:* Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000.

*Instructions:* Unless submitting online, commenters must submit an original, five paper copies, and an electronic version on a CD. All submissions must include the Copyright Royalty Board name and docket number(s). All submissions received and accepted will be filed and posted to eCRB on *https://www.crb.gov* without change, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 16–CRB–0014 DART–SRF (CO) (2015) or docket number 16–CRB–0022–DART–SRF (FRA) (2015). For documents not yet uploaded to eCRB (because it is a new system), go to the CRB Web site at *https://www.crb.gov/* or contact the CRB Program Specialist.

**FOR FURTHER INFORMATION CONTACT:** Anita Brown-Blaine, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:** On June 23, 2017, the Alliance of Artists and Recording Companies (AARC), on behalf of itself and claimants with which it has reached settlements (Settling Claimants) filed with the Copyright Royalty Judges (Judges) a Notice of Settlement and Request for Partial Distribution of the 2015 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties (Notice and Request). In the Notice and Request, AARC states that the Settling Claimants have agreed among themselves concerning distribution of the 2015 DART Sound Recordings Fund royalties from two subfunds: Copyright Owners and Featured Recording Artists.

With respect to the Featured Recording Artists Subfund, AARC represents that it has reached settlements with all but one claimant (Herman Kelly). AARC contends that Mr. Kelly had sales of approximately 157,000 out of a total of 1 billion sold for the year. Notice and Request at 2.

With respect to the Copyright Owners Subfund, AARC represents that it has reached settlements with all but four claimants (Herman Kelly, Eugene Curry, George Clinton, and C. Kunspyruhzy-George Clinton). AARC contends that the combined sales of the non-settling copyright owners is approximately 192,000 units out of approximately 1 billion sold for the year. *Id.* at 3.

AARC requests a partial distribution of 98% from the Copyright Owners Subfund and an equal percentage from the Featured Recording Artists Subfund pursuant to Section 801(b)(3)(C) of the Copyright Act. Under that section of the Copyright Act, before ruling on a partial distribution motion the Judges must publish a notice in the **Federal Register** seeking responses to the motion to ascertain whether any claimant entitled to receive such royalty fees has a reasonable objection to the proposed distribution. 17 U.S.C. 801(b)(3)(C). Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution from the 2015 DART Sound Recordings Fund of 98% of the royalties in the Featured Recording Artists Subfund and 98% of the royalties in the Copyright Owners Subfund to the Settling Claimants. Any party wishing to advise the Judges of the existence and extent of an objection must do so, in writing, by the end of the comment period. The Judges will not consider any objections to the partial distribution motion that are raised after the close of that period.

[1] The motion was filed under docket number 16–CRB–0014 DART–SRF (CO) (2015). CO stands for Copyright Owners subfund. The motion should have included a second docket number because it includes a request regarding both the CO subfund and another subfund (the Featured Recording Artists (FRA) subfund). An additional docket number, 16–CRB–0022–DART–SRF (FRA) (2015), has been assigned to the motion. (Note that the docket number for the Copyright Owners fund has been revised to add an F after SR to bring it into conformity with eCRB docket numbering protocols.)

Dated: August 9, 2017.

**Suzanne M. Barnett,**

*Chief U.S. Copyright Royalty Judge.*

[FR Doc. 2017–17166 Filed 8–14–17; 8:45 am]

**BILLING CODE 1410–72–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2017–0175]**

## Biweekly Notice: Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Biweekly notice.

**SUMMARY:** Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from July 18 to July 31, 2017. The last biweekly notice was published on August 1, 2017.

**DATES:** Comments must be filed by September 14, 2017. A request for a hearing must be filed by October 16, 2017.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0175. 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.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: TWFN–8–D36M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Beverly Clayton, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3475, email: *Beverly.Clayton@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2017–0175, facility name, unit number(s), plant docket number, application date, and subject, when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0175.
- *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.

*B. Submitting Comments*

Please include Docket ID NRC–2017–0175, facility name, unit number(s), plant docket number, application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance.

The Commission expects that the need to take this action will occur very infrequently.

*A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

*B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10

days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (PVNGS), Maricopa County, Arizona*

*Date of amendment request:* June 22, 2017. A publicly-available version is in ADAMS under Accession No. ML17173A877.

*Description of amendment request:* The amendment would revise the PVNGS Technical Specifications (TSs) to eliminate TS Section 5.5.8, ''Inservice Testing Program.'' A new defined term, ''Inservice Testing Program,'' will be added to the TS definitions section. This request is consistent with Technical Specification Task Force (TSTF) Traveler TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing.'' The proposed change eliminates the PVNGS TS, Section 5.5.8, to remove requirements duplicated in the American Society of Mechanical Engineers Code for Operations and Maintenance of Nuclear Power Plants (ASME OM Code) Code Case OMN–20, ''Inservice Test Frequency.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change revises Chapter 5, Administrative Controls, Section 5.5, *Programs and Manuals,* by eliminating the *Inservice Testing Program* specification. Requirements in the IST [Inservice Testing] Program are removed, as they are duplicative of requirements in the ASME OM Code, as clarified by Code Case OMN–20, *Inservice Test Frequency.* Other requirements in Section 5.5.8, *Inservice Testing Program* are eliminated because the NRC has determined

their inclusion in the TS is contrary to regulations. A new defined term, *Inservice Testing Program,* is added which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test periods under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing periods greater than two years may be extended by up to six months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing period extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in Code Case OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with periods greater than two years to be extended by six months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing period extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS SR 3.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing period, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Attorney for licensee:* Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, AZ 85072–2034.

*NRC Branch Chief:* Robert J. Pascarelli.

*Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station (VY), Vernon, Vermont*

*Date of amendment request:* May 1, 2017. A publicly-available version is in ADAMS under Accession No. ML17124A429. This request was supplemented by information submitted by the licensee by letter dated June 13, 2017 (ADAMS Accession No. ML17166A234).

*Description of amendment request:* The proposed amendment would extend the scheduled implementation date for Milestone 8 of the VY Cyber Security Plan (CSP) to July 31, 2019, to support the decommissioning status of VY.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change to the CSP implementation schedule is administrative in nature.

This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of facility systems or the manner in which systems are operated, maintained, modified, tested, or Inspected. The proposed change does not require any facility modifications which affect the performance capability of the structures, systems, and components (SSCs) relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to the CSP implementation schedule is administrative in nature.

This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of facility systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any facility modifications which affect the performance capability of the SSCs relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified In the Technical Specifications. The proposed change to the CSP implementation schedule is administrative in nature. In addition, the milestone date delay for full implementation of the CSP has no substantive impact because other measures, including completing and maintaining interim Milestones 1 through 7, have been taken which provide adequate protection during this period of time. Because there is no change to established safety margins as a result of this proposed change, no significant reduction in a margin of safety is involved.

Therefore the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Susan Raimo, Senior Counsel, Entergy Services, Inc., 101 Constitution Avenue

NW., Suite 200 East, Washington, DC 20001.

*NRC Branch Chief:* Bruce Watson.

*FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio*

*Date of amendment request:* June 20, 2017. A publicly-available version is in ADAMS under Accession No. ML17171A301.

*Description of amendment request:* The proposed amendment would revise a surveillance requirement (SR) in Technical Specification 3.8.1, ''AC Sources—Operating,'' to clarify that the intent of the surveillance is to verify that only the non-critical diesel generator (DG) trips are bypassed on an emergency core cooling system initiation signal. The proposed changes are consistent with Technical Specification Task Force Improved Standard Technical Specifications Change Traveler 400–A, Revision 1, ''Clarify SR on Bypass of DG Automatic Trips.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change clarifies the purpose of SR 3.8.1.13, which is to verify that non-critical automatic diesel generator (DG) trips are bypassed in an accident. The DG automatic trips and their bypasses are not initiators of any accident previously evaluated. Therefore, the probability of any accident is not significantly increased. The function of the DGs in mitigating accidents is not changed. The revised SR continues to ensure the DGs will operate as assumed in the accident analyses. Therefore, the consequences of any accident previously evaluated are not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change clarifies the purpose of SR 3.8.1.13, which is to verify that non-critical automatic DG trips are bypassed in an accident. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change clarifies the purpose of SR 3.8.1.13, which is to verify that non-critical automatic DG trips are bypassed in an accident. Performance of the clarified SR will verify that the non-critical trips are bypassed on simulated ECCS [emergency core cooling system] actuation signals to ensure that actuation of a non-critical trip does not take a DG out of service during an emergency. The bypassing of the non-critical automatic DG trips will maintain DG availability during an emergency so that it will be able to perform its assumed safety function. As such, the safety function of the DGs remains unaffected, so the change does not affect the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

*NRC Branch Chief:* David J. Wrona.

*Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station (FCS), Unit No. 1, Washington County, Nebraska*

*Date of amendment request:* June 9, 2017. A publicly-available version is in ADAMS under Accession No. ML17160A405.

*Description of amendment request:* The proposed amendment would delete Technical Specifications (TSs) 2.8.3(6), ''Spent Fuel Cask Loading,'' and associated Figure 2–11, ''Limiting Burnup Criteria for Acceptable Storage in Spent Fuel Cask''; TS 3.2 Table 3–5(24), ''Spent Fuel Cask Loading''; TS 4.3.1.3, Design Features associated with spent fuel casks; and portions of TS 3.2, Table 3–4(5), Footnote (4) on boron concentration associated with cask loading. The deletion of the TS sections will bring the FCS TSs into conformance with 10 CFR 50.68(c) ''Criticality accident requirements.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change simply bring[s] the [station's] technical specifications into compliance with the current version of 10 CFR 50.68. There is no change to probability or consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not alter [any] safety limits, or safety analysis assumptions associated with the operation of the plant. The proposed change does not introduce any new accident initiators, nor does the change reduce or adversely affect the capabilities of any plant structure or system in the performance of its safety function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change does not alter the manner in which safety limits or limiting safety system settings are determined. The safety analysis acceptance criteria are not affected by the proposed change. The proposed change does not change the design function of any equipment assumed to operate in the event of an accident.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

*NRC Branch Chief:* Douglas A. Broaddus.

*Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station (FCS), Unit No. 1, Washington County, Nebraska*

*Date of amendment request:* June 16, 2017. A publicly-available version is in ADAMS under Accession No. ML17167A057.

*Description of amendment request:* The proposed amendment would remove the FCS Cyber Security Plan (CSP) from the FCS Operating License Condition.

*Basis for proposed no significant hazards consideration determination:*

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change to remove the [FCS CSP] requirement does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components [SSCs] relied upon to mitigate the consequences of postulated accidents, and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to remove the [FCS CSP] requirement does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the [SSCs] relied upon to mitigate the consequences of postulated accidents, and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The amendment proposes the elimination of the CSP as set forth in the CSP Implementation Schedule and associated regulatory commitments. The elimination of the CSP does not involve modifications to any safety-related SSCs. The proposed amendment is based on the comparison of the risks at an operating nuclear power reactor as opposed to a nuclear power reactor that has permanently ceased operations and has removed all fuel from the reactor vessel. The spectrum of possible accidents are significantly fewer and the risk of an offsite radiological release is significantly lower for a permanently defueled reactor.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

*NRC Branch Chief:* Douglas A. Broaddus.

*Southern Nuclear Operating Company, Inc., Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia*

*Date of amendment request:* June 23, 2017. A publicly-available version is in ADAMS under Accession No. ML17179A171.

*Description of amendment request:* The requested amendment requires changes to the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the plant-specific Design Control Document Tier 2 information and involves changes to the VEGP Units 3 and 4 COL Appendix A, Technical Specifications (TS). Specifically, the proposed changes revise plant-specific Tier 2 information to add the time delay assumed in the safety analysis for the reactor trip on a safeguards actuation (''S'') signal to UFSAR Table 15.0–4a. This is also reflected in the proposed revision to TS 3.3.4, Reactor Trip System (RTS) Engineered Safety Feature Actuation System (ESFAS) Instrumentation, to add a surveillance requirement to verify the RTS response time for this ''S'' signal.

The request also includes proposed changes to TS 3.3.7, RTS Trip Actuation Devices, to clarify that the requirements for reactor trip breaker (RTB) undervoltage and shunt trip mechanisms apply only to in-service RTBs. In addition, the request includes proposed changes to TS 3.3.9, ESFAS Manual Initiation, to correct the nomenclature for the Chemical and Volume Control System, which is advertently stated as the Chemical Volume and Control System.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below NRC staff edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The changes do not involve an interface with any [structure, system, and component (SSC)] accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the plant-specific UFSAR are not affected. The proposed changes do not involve a change to any mitigation sequence or the predicted radiological releases due to postulated accident conditions, thus, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes do not adversely affect any system or design function or equipment qualification as the change does not modify any SSCs that prevent safety functions from being performed. The changes do not introduce a new failure mode, malfunction or sequence of events that could adversely affect safety or safety-related equipment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes would not affect any safety-related design code, function, design analysis, safety analysis input or result, or existing design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested changes.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North Birmingham, AL 35203–2015.

*NRC Branch Chief:* Jennifer Dixon-Herrity.

## III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of 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** as indicated.

Unless otherwise indicated, 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. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3, Maricopa County, Arizona*

*Date of application for amendment:* November 25, 2015, as supplemented by letters dated January 29, June 30, October 6, November 9, and November 23, 2016; and March 3 and May 24, 2017.

*Brief Description of amendment:* The amendments revised the Technical Specifications (TSs) for PVNGS, by modifying the requirements to incorporate the results of an updated criticality safety analysis for both new and spent fuel storage.

*Date of issuance:* July 28, 2017.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment Nos.:* Unit 1—203, Unit 2—203, and Unit 3—203. A publicly-available version is in ADAMS under Accession No. ML17188A412; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74:* The amendments revised the Operating Licenses and TSs.

*Date of initial notice in* ***Federal Register****:* April 5, 2016 (81 FR 19644). The supplements dated June 30, October 6, November 9, and November 23, 2016; and March 3 and May 24, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 2017.

*No significant hazards consideration comments received:* No.

*Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of application for amendments:* December 15, 2016.

*Brief description of amendments:* The amendments modified Technical Specification (TS) 3.6.3, ''Containment Isolation Valves,'' to add a Note to TS Limiting Condition for Operation (LCO) 3.6.3 Required Actions A.2, C.2, and E.2 to allow isolation devices that are locked, sealed, or otherwise secured to be verified by use of administrative means. The changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–269–A, Revision 2, ''Allow administrative means of position verification for locked or sealed valves.''

*Date of issuance:* July 21, 2017.

*Effective date:* These license amendments are effective as of their date of issuance and shall be implemented within 120 days of issuance.

*Amendment Nos.:* 290 and 286. A publicly available version is in ADAMS under Accession No. ML17165A441; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the licenses and TSs.

*Date of initial notice in* ***Federal Register****:* April 25, 2017 (82 FR 19098).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 2017.

*No significant hazards consideration comments received:* No.

*Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of application for amendments:* December 15, 2016.

*Brief description of amendments:* The amendments modified Technical Specification (TS) 3.1.8, ''PHYSICS TESTS Exceptions,'' to allow the numbers of channels required by the Limiting Condition of Operation (LCO) section of TS 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' to be reduced from ''4'' to ''3'' to allow one nuclear instrumentation channel to be used as an input to the reactivity computer for physics testing without placing the nuclear instrumentation channel in a tripped condition. The changes are consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–315–A, Revision 0, ''Reduce plant trips due to spurious signals to the NIS [Nuclear Instrumentation System] during physics testing.''

*Date of issuance:* July 26, 2017.

*Effective date:* These license amendments are effective as of its date of issuance and shall be implemented within 120 days of issuance.

*Amendment Nos.:* 291 (Unit 1) and 287 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML17172A428; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the licenses and TSs.

*Date of initial notice in* ***Federal Register****:* April 25, 2017 (82 FR 19098).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 26, 2017.

*No significant hazards consideration comments received:* No.

*Energy Northwest, Docket No. 50–397, Columbia Generating Station (Columbia), Benton County, Washington*

*Date of application for amendment:* July 14, 2016, as supplemented by letter dated July 5, 2017.

*Brief description of amendment:* The amendment changed the Columbia Technical Specifications (TSs) consistent with TS Task Force (TSTF) Standard Technical Specifications Change Traveler TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing,'' dated October 21, 2015.

*Date of issuance:* July 24, 2017.

*Effective date:* As of its date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 243. A publicly-available version is in ADAMS under Accession No. ML17187A257; documents related to this amendment

are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. NPF–21:* The amendment revised the Facility Operating License and TSs.

*Date of initial notice in* ***Federal Register****:* September 27, 2016 (81 FR 66304). The supplemental letter dated July 5, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 2017.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana*

*Date of amendment request:* July 25, 2016.

*Brief description of amendment:* The amendment changed the Waterford 3 Technical Specifications (TSs) consistent with Technical Specifications Task Force (TSTF) Standard Technical Specifications Change Traveler TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing,'' dated October 21, 2015.

*Date of issuance:* July 27, 2017.

*Effective date:* As of the date of issuance and shall be implemented 90 days from the date of issuance.

*Amendment No.:* 250. A publicly-available version is in ADAMS under Accession No. ML17192A007; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Facility Operating License No. NPF–38:* The amendment revised the Facility Operating License and TSs.

*Date of initial notice in* ***Federal Register****:* November 8, 2016 (81 FR 78647).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 2017.

*No significant hazards consideration comments received:* No.

*NextEra Energy, Point Beach, LLC, Docket No. 50–266, Point Beach Nuclear Plant (PBNP), Unit 1, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date amendment request:* July 29, 2016, as supplemented by letter dated April 20, 2017. Publicly-available versions of these documents are in ADAMS under Accession Nos. ML16237A066 and ML17110A068, respectively.

*Brief description of amendments:* The amendment consists of changes to the technical specifications (TSs) for PBNP, Unit 1. The amendment makes changes to TS 3.4.13, ''RCS Operational LEAKAGE,'' TS 5.5.8, ''Steam Generator (SG) Program,'' and TS 5.6.8, ''Steam Generator Tube Inspection Report,'' in order to implement the H* (pronounced H-star) alternate repair criteria on a permanent basis.

*Date of issuance:* July 27, 2017.

*Effective date:* As of the date of issuance and shall be implemented within 90 days of issuance.

*Amendment No.:* 260. A publicly-available version is in ADAMS under Accession No. ML17159A778; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. DPR–24:* Amendment revised the Facility Operating License and TSs.

*Date of initial notice in* ***Federal Register****:* December 6, 2016 (81 FR 87961). The supplemental letter dated April 20, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 2017.

*No significant hazards consideration comments received:* No.

*Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station (FCS), Unit 1, Washington County, Nebraska*

*Date of amendment request:* September 2, 2016, as supplemented by letters dated March 3 and April 5, 2017.

*Brief description of amendment:* The amendment revised the Nuclear Radiological Emergency Response Plan for FCS for the plant condition following permanent cessation of power operations and defueling to reflect changes in the shift staffing and Emergency Response Organization staffing.

*Date of issuance:* July 27, 2017.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 291. A publicly-available version is in ADAMS under Accession No. ML17123A348; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. DPR–40:* The amendment revised the license.

*Date of initial notice in* ***Federal Register****:* November 8, 2016 (81 FR 78650). The supplemental letters dated March 3 and April 5, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 2017.

*No significant hazards consideration comments received:* No.

*Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station (FCS), Unit 1, Washington County, Nebraska*

*Date of amendment request:* September 28, 2016, as supplemented by letter dated April 27, 2017.

*Brief description of amendment:* The amendment revised the Technical Specifications (TSs) to make administrative changes to align staffing for permanently defueled condition at FCS.

*Date of issuance:* July 28, 2017.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 292. A publicly-available version is in ADAMS under Accession No. ML17165A465; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. DPR–40:* The amendment revised the Renewed Facility Operating License and TSs.

*Date of initial notice in* ***Federal Register***: November 8, 2016 (81 FR 78650).

The supplemental letter dated April 27, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 2017.

*No significant hazards consideration comments received:* No.

*Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia*

*Date of amendment request:* January 20, 2017, and supplemented by letter dated June 6, 2017.

*Description of amendment:* The amendments consist of changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report (UFSAR) in the form of departures from plant-specific Design Control Document Tier 2 information, Combined License (COL) Appendix A Technical Specifications, and COL Appendix C information. The departures consist of in-containment refueling water storage tank (IRWST) minimum volume changes in plant-specific UFSAR Table 14.3–2, COL Appendix A Technical Specifications 3.5.6, 3.5.7 and 3.5.8 and Surveillance Requirements 3.5.6.2 and 3.5.8.2 and COL Appendix C (and associated plant-specific Tier 1) Table 2.2.3–4. The changes restore the desired consistency of these sections with the UFSAR IRWST minimum volume value in other locations.

*Date of issuance:* July 6, 2017.

*Effective date:* As of the date of issuance and shall be implemented within 30 days of issuance.

*Amendment Nos.:* 81 and 80. A publicly-available version is in ADAMS under Accession No. ML17171A137; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Facility Combined Licenses No. NPF–91 and NPF–92:* Amendment revised the Facility Combined Licenses.

*Date of initial notice in* ***Federal Register***: March 14, 2017 (82 FR 13662). The supplemental letter dated June 6, 2017, provided additional information that clarified the application, did not expand the scope of the application request as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated July 6, 2017.

*No significant hazards consideration comments received:* No.

*Susquehanna Nuclear, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania*

*Date of amendment request:* February 1, 2017, as supplemented by letter dated May 17, 2017.

*Brief description of amendments:* The amendments revised Technical Specification (TS) 3.6.4.3, ''Standby Gas Treatment (SGT) System,'' and TS 3.7.3, ''Control Room Emergency Outside Air Supply (CREOAS) System,'' by changing the run time of monthly surveillance requirements for the standby gas treatment and control room emergency outside air supply systems from 10 hours to 15 minutes. This change is consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–522, Revision 0, ''Revise Ventilation System Surveillance Requirements to Operate for 10 hours per Month,'' with minor variations. The notice of availability and model safety evaluation of TSTF–522, Revision 0, were published in the **Federal Register** on September 20, 2012 (77 FR 58421).

*Date of issuance:* July 28, 2017.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment Nos.:* 268 (Unit 1) and 250 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML17187A297; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF–14 and NPF–22:* The amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in* ***Federal Register***: April 11, 2017 (82 FR 17461). The supplemental letter dated May 17, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 2017.

*No significant hazards consideration comments received:* No.

*Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Units No. 1 and No. 2, Surry County, Virginia*

*Date of amendment request:* July 14, 2016, as supplemented by letters dated January 31, 2017, March 1, 2017 and March 10, 2017.

*Brief description of amendments:* The amendments would extend the Technical Specification (TS) 3.14.B allowed outage time for one inoperable emergency service water (ESW) pump from 7 to 14 days to provide operational flexibility for ESW pump maintenance and repairs.

*Date of issuance:* July 28, 2017.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment Nos.:* 290 and 290. A publicly-available version is in ADAMS under Accession No. ML17170A183; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Facility Operating License No. NPF–4 and NPF–7:* Amendments revised the Facility Operating Licenses and TSs.

*Date of initial notice in* ***Federal Register****:* October 25, 2016 (81 FR 73443). The letters dated January 31, 2017, March 1, 2017 and March 10, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 2017.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 4th day of August 2017.

For the Nuclear Regulatory Commission.

**Anne T. Boland,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2017–16998 Filed 8–14–17; 8:45 am]

**BILLING CODE 7590–01–P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Notice—September 6, 2017 Public Hearing

**TIME AND DATE:** 2:00 p.m., Wednesday, September 6, 2017.

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

**STATUS:** Hearing OPEN to the Public at 2:00 p.m.

**PURPOSE:** Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

**PROCEDURES:** Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, August 30, 2017. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, August 30, 2017. Such statement must be typewritten, double spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the September 14, 2017, Board meeting will be posted on OPIC's Web site.

**CONTACT PERSON FOR INFORMATION:** Information on the hearing may be obtained from Catherine F.I. Andrade at (202) 336–8768, via facsimile at (202) 408–0297, or via email at *Catherine.Andrade@opic.gov.*

Dated: August 11, 2017.

**Catherine F.I. Andrade,**

*OPIC Corporate Secretary.*

[FR Doc. 2017–17316 Filed 8–11–17; 4:15 pm]

**BILLING CODE 3210–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2017–169 and CP2017–262]**

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing 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:* August 17, 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).:* MC2017–169 and CP2017–262; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 340 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* August 9, 2017; *Filing Authority:* 39 CFR 3020.30; *Public Representative:* Matthew R. Ashford; *Comments Due:* August 17, 2017.

This notice will be published in the **Federal Register**.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2017–17217 Filed 8–14–17; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81365; File No. SR–IEX–2017–26]**

### Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct Nonsubstantive Conflicting Rule Text in Rule 11.190

August 9, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 8, 2017, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''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 Substance of the Proposed Rule Change**

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC (''IEX'' or ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to correct nonsubstantive conflicting rule text related to the behavior of market orders entered during the Pre-Market Session [6] marked DAY that are eligible to participate in either auctions for IEX-listed securities pursuant to

[1] 15 U.S.C. 78s(b)(1).
[2] 15 U.S.C. 78a.
[3] 17 CFR 240.19b–4.
[4] 15 U.S.C. 78s(b)(1).
[5] 17 CRF 240.19b–4.
[6] *See* Rule 1.160(z).

Rule 11.350, or the opening process for non-IEX-listed securities pursuant to Rule 11.231. The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [7] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[8]

The text of the proposed rule change is available at the Exchange's Web site at *www.iextrading.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 the 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 statement [sic] 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule filing is to correct nonsubstantive conflicting rule text related to the queuing behavior of market orders entered during the Pre-Market Session marked DAY that are eligible to participate in auctions for IEX-listed securities pursuant to Rule 11.350, or in the opening process for non-IEX-listed securities pursuant to Rule 11.231. On April 13, 2017, IEX filed with the Commission a proposed rule change to amend IEX Rule 11.231 to modify the manner in which the Exchange opens trading for non-IEX-listed securities beginning at the start of Regular Market Hours; and to amend IEX Rules 11.190 and 11.220 to specify the order types eligible to participate in the proposed opening process for non-IEX listed securities and the priority of such orders (the ''Opening Process''). The proposed rule change for the Opening Process was published for comment in the **Federal Register** on April 28, 2017.[9] On April 20, 2017, IEX filed with the Commission a proposed rule change to adopt rules governing auctions in IEX-listed securities, provide for the dissemination of auction related market data, and establish rules relating to trading halts and pauses (''IEX Auctions''). The proposed rule change for IEX Auctions was published for comment in the **Federal Register** on May 9, 2017.[10] On July 24th 2017, the Commission approved on an accelerated basis IEX's proposed Opening Process, as modified by Amendment 3.[11] On August 4, 2017, the Commission approved on an accelerated basis the IEX Auctions proposal, as modified by Amendment 2.[12]

The rule changes related to both the Opening Process and IEX Auctions included a modification to Rule 11.190(a)(2)(E)(iii), to specify that market orders marked DAY entered during the Pre-Market Session will be queued by the System until the Opening Auction (or Halt Auction, as applicable), for IEX-listed securities pursuant to IEX Rule 11.350, or until the Opening Process for non-IEX-listed securities pursuant to IEX Rule 11.231. However, because the proposed rule changes for the Opening Process and IEX Auctions were filed and pending action from the Commission concurrently, the proposed rule changes specified in Exhibit 5 to each rule change filing were each separately specified as compared to existing IEX rules. Therefore, the Exhibits 5 to each rule change filing specify distinct behavior, pursuant to Rule 11.190(a)(2)(E)(iii), for how market orders marked as DAY queue before the applicable open for the security in question. Exhibit 5 to the IEX Auctions filing provides that such orders queue until the Opening Auction (or Halt Auction, as applicable) for IEX listed securities. Exhibit 5 to the Opening Process filing provides that such orders queue until the Opening Process for non-listed securities. As a technical matter, after the Commission's approval of the rule changes related to IEX Auctions, which came subsequent to the Commission's approval of the Opening Process, Rule 11.190(a)(2)(E)(iii) no longer specifies the queueing behavior of market orders entered during the Pre-Market Session marked DAY in the Opening Process. Accordingly, IEX proposes to consolidate and correct the rule text changes to Rule 11.190(a)(2)(E)(iii), as approved in each rule filing to provide that Market orders marked DAY submitted before the open of the Regular Market Session are queued by the System until the Opening Auction (or Halt Auction, as applicable) for IEX-listed securities pursuant to IEX Rule 11.350, or until the Opening Process for non-IEX-listed securities pursuant to IEX Rule 11.231, except market orders marked DAY that are designated to route pursuant to Rule 11.230(c). Market orders marked DAY are eligible to trade or route during the Regular Market Session and treated by the System as having a time-in-force of IOC.

As recently announced by IEX Trading Alert #2017–027, on August 24, 2017 the Exchange is beginning a multi-phase deployment of the Opening Process functionality for non-test securities.[13] Furthermore, the Exchange believes that some Members are currently in the process of making or testing technology changes for the Exchange's Opening Process. Accordingly, in order to provide clarity to Members and other market participants regarding the Opening Process, and specifically to avoid potential confusion regarding the queueing behavior of market orders entered during the Pre-Market Session marked as DAY, the Exchange is proposing to make the conforming change to Rule 11.190(a)(2)(E)(iii) described above to clearly state that such orders will be queued by the System until the Opening Auction (or Halt Auction, as applicable) for IEX-listed securities pursuant to IEX Rule 11.350, or until the Opening Process for non-IEX-listed pursuant to IEX Rule 11.231.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b) [14] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act [15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes it is consistent with the Act to correct the conflicting rule provisions so that IEX's rules are accurate and descriptive of the System's functionality as approved by the

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4.

[9] *See* Securities Exchange Act Release No. 80514 (April 24, 2017), 82 FR 19763 (April 28, 2017).

[10] *See* Securities Exchange Act Release No. 80583 (May 3, 2017), 82 FR 21634 (May 9, 2017).

[11] *See* Securities Exchange Act Release No. 81195 (July 24, 2017), 82 FR 35250 (July 28, 2017).

[12] *See* Securities Exchange Act Release No. 81316 (August 4, 2017), awaiting publication to the **Federal Register**.

[13] *See* IEX Trading Alert #2017–027 (Deployment Schedule for New Opening Process for Non-IEX-Listed Securities), August 3, 2017.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

Commission, and to avoid any potential confusion among Members and market participants regarding the Opening Process.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed correction does not impact competition in any respect since it is designed to correct a conflict between two approved versions of Exchange rule 11.190(a)(2)(E)(iii), without changing the substance of the Rules as separately approved.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) [16] of the Act and Rule 19b–4(f)(6) [17] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6) [19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange represents that waiver will allow it to promptly reconcile a potential conflict between two recently-approved changes to IEX Rule 11.190(a)(2)(E)(iii) without changing the substance of that Rule, thus avoiding any potential confusion among market participants regarding the Exchange's Opening Process. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will resolve a potential ambiguity in IEX's rules concerning queuing of market orders marked DAY before the open of trading involving either IEX-listed securities or non-IEX-listed securities. While the current rule text references the term ''Opening Auction'' for both types of securities, IEX uses the term ''Opening Process'' for the latter. To avoid any potential confusion, IEX is proposing to use that more precise term in this subsection of the rule when it references non-IEX-listed securities. Accordingly, the proposed rule change raises no new or novel issues and the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change operative upon filing.[21]

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 under Section 19(b)(2)(B) [22] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2017–26 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2017–26. This file number should be included in 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 Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its Internet Web site at *www.iextrading.com.* 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–IEX–2017–26 and should be submitted on or before September 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–17172 Filed 8–14–17; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] Under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the prefiling requirement for its proposal in order to allow it to file this clarification without undue delay. The Commission hereby waives that requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] 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).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81363; File No. SR–BatsBZX–2017–07)]**

## Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the VanEck Vectors AMT-Free National Municipal Index ETF of VanEck Vectors ETF Trust Under BZX Rule 14.11(c)(4)

August 9, 2017.

On January 27, 2017, Bats BZX Exchange, Inc. (''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 list and trade shares of the VanEck Vectors AMT-Free National Municipal Index ETF of VanEck Vectors ETF Trust under BZX Rule 14.11(c)(4). The proposed rule change was published for comment in the **Federal Register** on February 14, 2017.[3] On March 10, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On March 30, 2017, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] On May 11, 2017, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on February 14, 2017. August 13, 2017 is 180 days from that date, and October 12, 2017 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates October 12, 2017 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–BatsBZX–2017–07), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–17171 Filed 8–14–17; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79989 (February 8, 2017), 82 FR 10615.

[4] Amendment No. 1 to the proposed rule change is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-batsbzx-2017-07/batsbzx201707-1667531-148997.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 80350, 82 FR 16647 (April 5, 2017).

[7] *See* Securities Exchange Act Release No. 80664, 82 FR 22680 (May 17, 2017).

[8] 15 U.S.C. 78s(b)(2).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81359; File No. SR–MRX–2017–14]**

## Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Market Maker Quotations

August 9, 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 July 26, 2017, Nasdaq MRX, LLC (''MRX'' 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 Rule 804, entitled ''Market Maker Quotations.''

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 Exchange proposes to amend MRX Rule 804, entitled ''Market Maker Quotations'' to amend the current rule text at MRX Rule 804(g)(1) and (2) to adopt a revised description of the manner in which MRX removes Market Maker quotes when certain risk parameters have been triggered. The Exchange believes that the proposed new rule text will provide more detailed information to participants concerning the manner in which these risk features will remove quotes from the Order Book.

Today, MRX Rule 804(g)(1) provides that a Market Maker must provide parameters by which the Exchange will automatically remove a Market Maker's quotations in all series of an options class. If a Market Maker does not provide parameters then the Exchange will apply default parameters announced to members. The Exchange will automatically remove a Market Maker's quotation when, during a time period established by the Market Maker, the Market Maker exceeds: (i) The specified number of total contracts in the class, (ii) the specified percentage of the total size of the Market Maker's quotes in the class, (iii) the specified absolute value of the net between contracts bought and contracts sold in the class, or (iv) the specified absolute

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

value of the net between (a) calls purchased plus puts sold in the class, and (b) calls sold plus puts purchased in the class.

The Exchange proposes to adopt a new rule that continues to require Market Makers to provide parameters by which the Exchange will automatically remove a Market Maker's quotations in all series of an options class. The Exchange proposes to amend this rule text to apply to the automated quotation removal protections in the current rule.[3]

The proposed rule text in 804(g)(1) makes clear that Market Makers are required to utilize the Percentage, Volume, Delta and Vega Thresholds, each a Threshold, described in subsections (A)–(D) in the new rule text. These are the same risk parameters that are offered today by MRX. The Exchange is seeking to identify each risk parameter specifically and describe the function of each parameter in Rule 804(g)(1)(A)–(D). For each feature, the Exchange's system (''System'') will continue to automatically remove quotes in all series in options class when a certain threshold for any of the parameters has been exceeded.

The Exchange elaborates in the proposed rule that a Market Maker is required to specify a period of time not to exceed 30 seconds (''Specified Time Period'') during which the system will automatically remove a Market Maker's quotes in all series of an options class. The limitation of not to exceed 30 seconds is new for MRX Members. In order to establish a reasonable limit to the allowable Specified Time Period, an MRX Member will be limited to the setting their Specified Time period to no more than 30 seconds for these Thresholds. A Specified Time Period will commence for an options class every time an execution occurs in any series in such options class and will continue until the System removes quotes as described in proposed MRX Rule 804(g)(2) or (3) or the Specified Time Period expires. This is the case today, and is not changing. The Specified Time Periods will be the same value described in subsections (A)–(D). Also, as is the case today, a Specified Time Period operates on a rolling basis among all series in an options class in that there may be Specified Time Periods occurring simultaneously for each Threshold and such Specified Time Periods may overlap. If a Market Maker does not provide parameters, the Exchange will apply default parameters, which default settings will be announced to Members via an Options Trader Alert.

Proposed Rule 804(g)(1)(A) describes in greater detail the operation of the Percentage Threshold. As is the case today, a Market Maker must provide a specified percentage of quote size (''Percentage Threshold''), of not less than 1%, by which the System will automatically remove a Market Maker's quotes in all series of an options class. The Exchange is adding more detail about the manner in which the System will calculate percentages and amending the current rule to change its operation.

For each series in an options class, the System will determine (i) during a Specified Time Period and for each side in a given series, a percentage calculated by dividing the size of a Market Maker's quote size executed in a particular series (the numerator) by the Market Maker's quote size available at the time of execution plus the total number of the Market Market's quote size previously executed during the unexpired Specified Time Period (the denominator) (''Series Percentage''); and (ii) the sum of the Series Percentages in the options class (''Issue Percentage'') during a Specified Time Period. The System will track and calculate the net impact of positions in the same option issue; long call percentages are offset by short call percentages, and long put percentages are offset by short put percentages in the Issue Percentage. The Exchange also notes that in calculating the Percentage the System will compare the number of contracts executed in that series relative to the size of the quote at the time of the execution plus the number of executed contracts that have occurred in the current time period. The current system calculates the Percentage risk parameter by comparing the number of contracts executed in that series relative to the size of the original quote only at the time of the execution. This difference is captured within the proposed rule text.

The Exchange notes that with the upcoming migration from MRX's current system to the INET system the manner in which the System offsets will change. The current MRX system does not offset, in that long call percentages are not offset by short call percentages, and long put percentages are not offset by short put percentages, [sic] The proposed System however will track and calculate the net impact,[4] [sic] The Exchange notes this difference in the calculation and seeks to memorialize the change in the process upon the migration to INET. The proposed rule will provide participants with greater clarity as to the operation of the Percentage risk feature on INET. The proposed text indicates that if the Issue Percentage exceeds the Percentage Threshold the System will automatically remove a Market Maker's quotes in all series of the options class.

Proposed Rule 804(g)(1)(B) describes in greater detail the operation of the Volume Threshold. As is the case today on MRX's current system, a Market Maker must provide a Volume Threshold by which the System will automatically remove a Market Maker's quotes in all series of an underlying security when the Market Maker executes a number of contracts which exceeds the designated number of contracts in all options series in an options class.

Proposed Rule 804(g)(1)(C) describes in greater detail the operation of the Delta Threshold. As is the case today on MRX's current system, a Market Maker must provide a Delta Threshold by which the System will automatically remove a Market Maker's quotes in all series of an underlying security. For each class of options, the System will maintain a Delta counter, which tracks the absolute value of the difference between (i) purchased call contracts plus sold put contracts and (ii) sold call contracts plus purchased put contracts. If the Delta counter exceeds the Delta Threshold established by the Member, the System will automatically remove a Market Maker's quotes in all series of the options class.

Proposed Rule 804(g)(1)(D) describes in greater detail the operation of the Vega Threshold. As is the case today on MRX's system, a Market Maker must provide a Vega Threshold by which the System will automatically remove a Market Maker's quotes in all series of an options class. For each class of options, the System will maintain a Vega counter, which tracks the absolute value of purchased contracts minus sold contracts. If the Vega counter exceeds the Vega Threshold established by the Member, the System will automatically remove a Market Maker's quotes in all series of the options class.

[3] The Exchange notes that it separately filed a proposed rule change to MRX Rule 804(g)(1) to provide that a Market Maker must provide parameters by which the Exchange will automatically remove a Market Maker's quotations in all series of an options class. If a Market Maker does not provide parameters then the Exchange will apply default parameters announced to members. *See* Securities Exchange Act Release No. 81204 July 25, 2017) (SR–MRX–2017–02) (not yet published) [sic] (Order Approving Proposed Rule Change to Amend Various Rules in Connection with a System Migration to Nasdaq INET Technology). The proposed rule text seeks to reword and relocate the proposed amended language concerning the parameters to include that language in the revised rule text.

[4] The net impact of positions takes into account the offsets noted herein.

Proposed Rule 804(g)(2) provides more detail about the System's current operation with respect to quote removal. The System will automatically remove quotes in all options in an underlying security when the Percentage Threshold, Volume Threshold, Delta Threshold or Vega Threshold has been exceeded. The System will send a Purge Notification Message to the Market Maker for all affected series when any of the above thresholds have been exceeded. The Percentage Threshold, Volume Threshold, Delta Threshold and Vega Threshold are considered independently of each other. Quotes will be automatically executed up to the Market Maker's size regardless of whether the execution of such quotes would cause the Market Maker to exceed the Percentage Threshold, Volume Threshold, Delta Threshold or Vega Threshold.

Proposed Rule 804(g)(3) provides more detail about the manner in which the System resets the counting of the various risk parameters. Notwithstanding the automatic removal of quotes described in the rule, if a Market Maker requests the System to remove quotes in all options series in an options class, the System will automatically reset all Thresholds.

Proposed Rule 804(g)(4) provides more detail about the process to re-initiate quoting. When the System removes quotes because the Percentage Threshold, Volume Threshold, Delta Threshold or Vega Threshold were exceeded, the Market Maker must send a re-entry indicator to re-enter the System.

Proposed Rule 804(g)(5) provides more detail about default parameters as mentioned above. If a Market Maker does not provide a parameter for each of the automated quotation removal Thresholds described in Rule 804(g)(1)(A–D) above, the Exchange will apply default parameters, which are announced to Members. This language exists today in the current text and is being memorialized herein.

Finally, proposed Rule 804(g)(6) describes the interaction between the four Thresholds and the market wide parameter. In addition to the Thresholds described in Rule 804(g)(1)(A)–(D) above, a Market Maker must provide a market wide parameter by which the Exchange will automatically remove a Market Maker's quotes in all classes when, during a time period established by the Market Maker, the total number of quote removal events specified in Rule 804(g)(1)(A)–(D) exceeds the market wide parameter provided to the Exchange by the Market Maker.

Below are some illustrative examples of the Percentage and Volume risk parameters.

Example #1: Describes the Percentage risk parameter. Presume the following Order Book:

| Series of underlying XYZ | Size on bid × offer for MM1 |
|---|---|
| 100 Strike Call | 300 × 300 |
| 100 Strike Put | 50 × 50 |
| 110 Strike Call | 200 × 200 |
| 110 Strike Put | 150 × 150 |

In this example, assume the Specified Time Period designated by the Market Maker #1 is 10 seconds and the Percentage Threshold is set to 100%. Assume at 12:00:00, Market Maker #1 executes 100 contracts of his offer size, 200 contracts, in the 110 Strike Calls. This represents an execution equaling 50% (100 contracts of the 200 contract quote size) of the 100% Percentage Threshold. Assume at 12:00:01, Market Maker #1 executes 50 additional contracts in the same 110 Strike Calls. This execution equates to an additional 25% ((50 contracts/(100 remaining quote size +100 contracts already executed within the Specified Time Period)) for a net 75% Series Percentage count toward the 100% Percentage Threshold. If at 12:00:03, Market Maker #1 executes the full size of his bid (50 contracts) in the 100 Strike Put, the System will automatically remove all of Market Maker #1's quotes in Underlying XYZ since the execution caused his 100% Percentage Threshold to be exceeded; the execution in the 100 Strike Put added 100% Series Percentage to his previously calculated Series Percentage of 75% totaling 175% Issue Percentage. No further quotes for Market Maker #1 in Underlying XYZ will be available until re-entry. The Specified Time Period will be reset for Market Maker #1 in options class XYZ and Market Maker #1 will need to send a re-entry indicator in order to re-enter quotes in options series for options class XYZ into the System.

Example #2 is another example of the Percentage Threshold. Presume the following Order Book:

In this example, assume Market Maker #1 has Percentage Threshold set at 100% with a Specified Time Period over 5 seconds. Assume at 12:00:00, Market Maker #1 is quoting the XYZ 20 strike calls at 1.00 (10)–1.20 (10). An incoming Order to buy 5 contracts for 1.20 trades against Market Maker #1's quote. Based on this trade, the Series Percentage Threshold calculation is 5/[(10)+(0)] = 5/10 = 50%. Since this is the only execution during the Time Period, 50% also represents the Issue Percentage, therefore Market Maker #1's quote is now 1.00 (10)–1.20 (5).

Next, assume at 12:00:01 an Incoming Order to buy 2 contracts for 1.20 trades against Market Maker #1's quote. Based on this trade, the Series Percentage Threshold calculation is 2/[(5)+(5)] = 2/10 = 20%. The Issue Percentage calculation is the sum of Series Percentages during the time period, or 50% +20% = 70%.

Finally, presume Market Maker #1's quote is now 1.00 (10)–1.20 (3). At 12:00:02, Market Maker #1 updates his quote in the XYZ 20 strike calls to increase his offer size back to 10 contracts, 1.00 (10)–1.20 (10). An incoming Order to buy 6 contracts for 1.20 trades against Market Maker #1's quote. Based on this trade, the Series Percentage Threshold calculation: 6/[(10)+(7)] = 6/17 = 35.29%. The Issue Percentage calculation is the sum of Series Percentages during the time period, or 50% + 20% + 35.29% = 105.29%. In this scenario, Market Maker #1's quotes are removed in all series of XYZ since his setting of 100% over 5 seconds has been exceeded.

Example #3 describes the Volume Threshold. Presume the following Order Book:

| Series of underlying XYZ | Size on bid × offer for MM1 |
|---|---|
| 100 Strike Call | 300 × 300 |
| 100 Strike Put | 50 × 50 |
| 110 Strike Call | 200 × 200 |
| 110 Strike Put | 150 × 150 |

In this example, assume the Specified Time Period designated by the Market Maker #1 is 10 seconds and the designated number of contracts permitted for the Volume-Based Threshold is 250 contracts. Assume at 12:00:00, the Market Maker #1 executes all of his offer size, 200 contracts, in the 110 Strike Calls. The System will initiate the Specified Time Period and for 10 seconds the System will count all volume executed in series of options class XYZ. If at any point during that 10 second period, the Market Maker #1 executes additional contracts in any series of the options class XYZ, those contracts will be added to the initial execution of 200 contracts. To illustrate, assume at 12:00:05 the Market Maker #1 executes 60 contracts of his offer in the 100 Strike Calls. The total volume executed is now 260 contracts. Since that volume exceeds the Market Maker #1's designated number of contracts for the Volume Threshold (250 contracts), all of his quotes in all series of the options class XYZ over the Specialized

Quote Feed [5] will be removed from the System; no further quotes will be executed until re-entry. The Volume Specified Time Period will be reset for Market Maker #1 in options class XYZ and Market Maker #1 will need to send a re-entry indicator in order to re-enter quotes in options series for options class XYZ into the System.

Implementation

The Exchange will begin a system migration to Nasdaq INET in Q3 of 2017.[6] The migration will be on a symbol by symbol basis as specified by the Exchange in a notice to Members. The Exchange is proposing to implement this rule change on the INET platform as the symbols migrate to that platform.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by memorializing, with greater detail, the risk protections available to Market Makers. The described Thresholds serve to decrease risk and increase stability. Additionally, because the Exchange offers these risk tools to Market Makers, in order to encourage them to provide as much liquidity as possible and encourage market making generally, the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system and protects investors and the public interest. The Exchange believes that amending Rule 804(g) to add more clarifying text, which explains in greater detail the manner in which the four Thresholds operate will bring more transparency to the rule which serves to protect investors and the public interest, because Market Makers will be more informed about the manner in which the functionality operates.

In addition, the Exchange's proposal to amend the current Percentage Threshold to: (i) Calculate offsets; and (ii) calculate the Percentage Threshold during a Specified Time Period and for each side in a given series, a percentage, by dividing the size of a Market Maker's quote size executed in a particular series (the numerator) by the Market Maker's quote size available at the time of execution plus the total number of the Market Market's quote size previously executed during the unexpired Specified Time Period, will provide Market Makers with greater precision in calculating quoting risks. The Exchange believes that providing Market Makers with tools to calculate risk serves to perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest because Market Makers are better able to manage risks with this risk tool.

The Exchange further represents that its proposal will continue to operate consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS and that the functionality is mandatory. Specifically, any interest that is executable against a Market Maker's quotes that are received [9] by the Exchange prior to the time any of these functionalities are engaged will be automatically executed at the price up to the Market Maker's size, regardless of whether such execution results in executions in excess of the Market Maker's pre-set parameters.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposal will not impose a burden on intra-market or inter-market competition, rather it provides Market Makers with the continued opportunity to avail themselves of risk tools, [sic] The proposal does not impose a burden on inter-market competition, because participants may choose to become Market Makers on a number of other options exchanges, which may have similar but not identical features.[10] The proposed rule change is meant to continue to protect Market Makers from inadvertent exposure to excessive risk. Accordingly, the proposed rule change will have no impact on competition.

The Exchange's proposal to amend the current Percentage Based risk feature to: (i) Calculate offsets; and (ii) calculate the Percentage Threshold during a Specified Time Period and for each side in a given series, a percentage, by dividing the size of a Market Maker's quote size executed in a particular series (the numerator) by the Market Maker's quote size available at the time of execution plus the total number of the Market Market's quote size previously executed during the unexpired Specified Time Period, does not impose an undue burden on competition and is non-controversial because the Exchange offers a Percentage Threshold today. The proposed changes to the Percentage risk tool simply add more precision to the existing calculation to permit Market Makers to better control their risk with respect to quoting.

Further, the Exchange is memorializing more detail concerning the function of the Thresholds with this rule proposal and making clear the method in which the Percentage risk tool is calculated. The risk tools will continue to reduce risk for Market Makers in the event of a systems issue or due to the occurrence of unusual or unexpected market activity.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

[5] The Specialized Quote Feed (''SQF'') interface allows Market Makers to connect and send quotes, sweeps and auction responses into MRX. SQF Data includes the following: (1) Options Auction Notifications (*e.g.,* opening imbalance, Flash, PIM, Solicitation and Facilitation or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (4) Option Trading Action Messages (*e.g.,* halts, resumes); (5) Execution Messages; and (6) Quote Messages (quote/sweep messages, risk protection triggers or purge notifications).

[6] *See* Securities Exchange Act Release No. 81204 July 25, 2017) (SR–MRX–2017–02) (not yet published) [sic] (Order Approving Proposed Rule Change to Amend Various Rules in Connection with a System Migration to Nasdaq INET Technology).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The time of receipt is the time such message is processed by the Order Book.

[10] *See* BATS Rule 21.16, BOX Rules 8100 and 8110, C2 Rule 8.12, CBOE Rule 8.18, MIAX Rule 612, NYSE MKT Rule 928NY and NYSE Arca Rule 6.40.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule

Continued

In its filing, MRX requests that the Commission waive the 30-day operative delay in order to enable the Exchange to coordinate the implementation of the proposed rule changes with its planned migration to the INET platform, which will commence in Q3 of 2017. Although the Exchange proposes certain technical changes to how the risk parameters will operate (*e.g.,* limiting the Specified Time Period to 30 seconds), the proposed changes are largely intended to provide more detail about the operation of the existing risk parameters. Accordingly, the Commission believes that granting a waiver of the operative delay is consistent with the protection of investors and the public interest and therefore designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors; or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2017–14 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–MRX–2017–14. 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–MRX–2017–14, and should be submitted on or before September 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Eduardo A. Aleman,**

*Assistant Secretary.*

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change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81362; File No. SR–Phlx–2017–61]**

## Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule

August 9, 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 July 31, 2017 NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule to: (i) Increase the Options Transaction Charge for Specialists and Market Makers who engage in NDX transactions on the Exchange Floor; (ii) exclude NDX transactions from the Exchange's Monthly Firm Fee Cap that otherwise applies to the monthly transaction fees that market participants incur when trading on the Exchange; and (iii) exempt NDX transactions from the Exchange's waiver of Options Transaction Charges for certain facilitation orders.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 1, 2017.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to make three changes to Section II of its Pricing Schedule. First, the Exchange proposes to increase its Options Transaction Charge for Specialists and Market Makers that engage in NDX transactions on the Exchange Floor. Last March, the Exchange increased its Options Transaction Charges from $0.25 to $0.75 per contract for all categories of market participants transacting in NDX, except for Specialists and Market Makers which transact in NDX on the Floor and

Customers.[3] At that time, the Exchange decided not to raise its $0.35 per contract Option Transaction Charge for Specialists and Market Makers transacting in NDX on the Floor because it sought to incentivize Specialists and Market Makers to continue to make markets in the NDX product on the Floor. However, the Exchange has decided to discontinue this incentive program and, as such, the Exchange now seeks to increase the Transaction Charge to $0.75 per contract. This proposal will harmonize the schedule of NDX Options Transaction Charges for all non-Customer market participants in all circumstances in which they trade in NDX on the Exchange in that it will charge them the same per contract fee and will do so for both Floor-based and electronic transactions (except that the Exchange will continue to refrain from imposing an Options Transaction Charge on Customers that engage in NDX transactions). Moreover, the fee increase will permit the Exchange to recoup its operational costs for listing NDX, which is a proprietary product of the Exchange.

Second, the Exchange proposes to exempt NDX Options Transaction Charges from the $75,000 Monthly Firm Fee Cap that it otherwise applies to member organizations that trade on the Exchange in their own proprietary accounts. The Exchange bases this proposal upon a similar exemption that CBOE applies from its $75,000 monthly transaction fee cap for its proprietary options index products, including VIX and SPX.[4]

Third, the Exchange proposes to exclude NDX Options Transactions from several waivers that it otherwise grants to certain categories of market participants of its Floor Options Transaction Charges. Specifically, the Exchange will not waive Firm Floor Options Transaction Charges for members that execute NDX facilitation orders when such members trade in their own proprietary account (including Cabinet Options Transaction Charges). Also, the Exchange will not waive Firm Floor Options Transaction Charges for the buy side of an NDX transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. Lastly, the Exchange will not waive the Broker-Dealer Floor Options Transaction Charge (including Cabinet Options Transaction Charges) for members that execute NDX facilitation in their own proprietary account contra to a Customer (''BD-Customer Facilitation''), where the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. The Exchange intends for these exclusions to help it recoup its costs of developing and maintaining NDX as a proprietary product. Again, moreover, this proposal is consistent with an exclusion for proprietary products that CBOE applies to fee waivers involving facilitation orders.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [9] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[10] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [11]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [12] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal to increase its Option Transaction Charges for Specialists and Market Makers transacting in NDX on the Floor is reasonable because the Exchange already charges Specialists and Market Makers $0.75 per contract for electronic transactions involving NDX as well the same amount for Professionals, Broker-Dealers, and Firms that engage in NDX transactions both electronically and on the Floor. The proposal, in other words, will bring the Exchange's Pricing Schedule for Option Transaction Charges into harmony, except for Customers. The Exchange also believes that its proposal is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same Options Transaction Charges to all similarly situated market participants, except for Customers.

[3] *See* Securities Exchange Act Release No. 34–80244 (March 13, 2017), 82 FR 14388 (March 20, 2017). The categories of market participants that incur an Options Transaction Charge of $0.75 per contract when they transact in NDX include Professionals (both electronic and Floor trading), Specialists and Market Makers (electronic trading only), Broker-Dealers (both electronic and Floor Trading), and Firms (both electronic and Floor trading).

[4] *See* Chicago Board Options Exchange, Inc., Fees Schedule (July 11, 2017), at n.22 (''For all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction, transaction fees for Clearing Trading Permit Holder Proprietary and/or their Non-Trading Permit Holder Affiliates (as defined in footnote 11) in all products except Underlying Symbol List A (34), excluding binary options, in the aggregate, are capped at $75,000 per month per Clearing Trading Permit Holder. As CBOE assesses no Clearing Trading Permit Holder Proprietary transaction fees for facilitation orders (other than Underlying Symbol List A (34), excluding binary options) (as described in footnote 11), such trades will not count towards the cap. Surcharge fees do not count towards the cap.''); *id.* at n.34 (defining ''Underlying Symbol List A'' to include SPX and VIX).

[5] *See id.* (noting that CBOE excludes its proprietary products from its $0.00 charge for facilitation orders).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[9] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[10] *See NetCoalition,* at 534–535.

[11] *Id.* at 537.

[12] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

The Exchange believes that its decision to refrain from assessing to Customers Options Transaction Charges for NDX is equitable and not unfairly discriminatory because Customer orders bring valuable liquidity to the market, which benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in these in the activity of these market participants, in turn, facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange also believes that its proposal to exempt NDX from the Monthly Firm Fee Cap on Options Transaction Charges is reasonable because CBOE employs a similar exemption from its monthly option transaction fee cap for transactions in its proprietary products.[13] This proposal is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members.

Finally, the Exchange believes that its proposal is reasonable to exclude NDX from the waivers of Options Transaction Charges that it otherwise grants in certain circumstances involving the execution of facilitation orders. Again, the Exchange's proposal is similar to that which CBOE employs with respect to facilitation orders involving its proprietary products. The Exchange also believes this proposal is reasonable insofar as the Exchange incurs costs associated with the development and maintenance of NDX as a proprietary product and the exclusion from the fee waiver will help it to recoup those costs. Furthermore, the Exchange believes that this proposal is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee waiver exclusion to all similarly situated members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed increase to the Options Transaction Charge for Specialists and Market Makers engaging in Floor-based MDX transactions does not impose a burden on competition because the increase will result in the Exchange uniformly assessing a $0.75 per contract Options Transaction charge for all market participants, except Customers, regardless of whether the transaction is submitted electronically or on the Floor.

The Exchange believes that assessing Customers no transaction fees for NDX does not impose an undue burden on intramarket competition because Customer orders bring valuable liquidity to the market, which benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in these in the activity of these market participants, in turn, facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange does not believe that its proposals to exempt NDX from its Monthly Firm Fee Cap and to exclude NDX transactions from its fee waivers for certain facilitation transactions will impose a burden competition. These proposals are similar to CBOE's practices with respect to its proprietary products.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2017–61 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2017–61. 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

[13] *See* Chicago Board Options Exchange, Inc., Fees Schedule, *supra*.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2017–61 and should be submitted on or before September 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–17170 Filed 8–14–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81364; File No. SR–BYX–2012–019]**

## Self-Regulatory Organization; BATS BYX-Exchange, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program

August 9, 2017.

On November 27, 2012, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule) [1] that granted the BATS BYX-Exchange, Inc. (''BYX'' or the ''Exchange'') a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Price Improvement (''RPI'') Program (the ''Program''). The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.[2] The exemption was granted coterminous with the effectiveness of the pilot Program and has been extended four times; [3] both the pilot Program and exemption are scheduled to expired on July 31, 2017.

The Exchange now seeks to extend the exemption until July 31, 2018.[4] The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program until July 31, 2018.[5] In its request to extend the exemption, the Exchange notes that the Program was implemented gradually over time. Accordingly, the Exchange has asked for additional time to allow itself and the Commission to analyze data concerning the Program, which the Exchange committed to provide to the Commission, as well as to allow additional opportunities for greater participation in the Program.[6] For this reason and the reasons stated in the Order originally granting the limited exemption, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

*Therefore, it is hereby ordered,* that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612(c) of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its RPI Program.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–17162 Filed 8–14–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81358; File No. 265–29]**

## Equity Market Structure Advisory Committee

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of Federal Advisory Committee Renewal.

**SUMMARY:** The Securities and Exchange Commission is publishing this notice to announce that the Chairman of the Commission, with the concurrence of the other Commissioners, has approved the renewal of the Securities and Exchange Commission Equity Market Structure Advisory Committee.

**FOR FURTHER INFORMATION CONTACT:** Arisa Kettig, Senior Special Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551–5676.

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., the Commission is publishing this notice that the Chairman of the Commission, with the concurrence of the other Commissioners, has approved the renewal of the Securities and Exchange Commission Equity Market Structure Advisory Committee (the ''Committee''). The Chairman of the Commission affirms that the renewal of the Committee is necessary and in the public interest.

The Committee's objective is to provide the Commission with diverse perspectives on the structure and operations of the U.S. equities markets, as well as advice and recommendations on matters related to equity market structure.

No more than seventeen voting members will be appointed to the Committee, representing a cross-section of those directly affected by, interested in, and/or qualified to provide advice to the Commission on matters related to equity market structure. The Committee's membership will continue to be balanced fairly in terms of points

[15] 17 CFR 200.30–3(a)(12).

[1] 17 CFR 242.612(c).

[2] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (''RPI Approval Order'') (SR–BXY–2012–019).

[3] *See* Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2012) (SR–BYX–2014–001) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 71250 (January 7, 2014), 79 FR 2234 (January 13, 2012) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR–BYX–2015–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); and 74115 (January 22, 2015), 80 FR 4324 (January 27, 2015) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 76965 (January 22, 2016), 81 FR 4682 (January 27, 2016) (SR–BYX–2016–01)(Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 76953 (January 21, 2016), 81 FR 4728 (January 27, 2016)(Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 78180 (June 28, 2016), 81 FR 43306 (July 1, 2016) (SR–BYX–2016–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 78178 (July 5, 2016), 81 FR 43689 (July 5, 2016)(Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program).

[4] *See* letter from Anders Franzon, Senior Vice President and Associate General Counsel, BYX, to Brent J. Fields, Secretary, Commission, dated August 7, 2017.

[5] *See* SR-BatsBYX–2017–18.

[6] *See* RPI Approval Order, *supra* note 2, at 77 FR at 71657.

[7] 17 CFR 200.30–3(a)(83).

of view represented and functions to be performed.

The Charter provides that the duties of the Committee are to be solely advisory. The Commission alone will make any determinations of actions to be taken and policies to be expressed with respect to matters within the Commission's jurisdiction as to which the Committee provides advice or makes recommendations. The Committee will meet at such intervals as are necessary to carry out its functions. The charter contemplates that the full Committee will meet one time. Meetings of subgroups or subcommittees of the full Committee may occur more frequently.

The Committee will terminate five months from the date it is renewed or such earlier date as determined by the Commission unless, before the expiration of that time period, it is renewed in accordance with the Federal Advisory Committee Act. A copy of the charter for the Committee has been filed with the Chairman of the Commission, the Committee on Banking, Housing, and Urban Affairs of the United States Senate, the Committee on Financial Services of the United States House of Representatives, the Committee Management Secretariat of the General Services Administration, and the Library of Congress. It also has been posted on the Commission's Web site at *www.sec.gov*.

By the Commission.

Dated: August 9, 2017.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–17138 Filed 8–14–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, August 17, 2017 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Consideration of amici participation;

Resolution of litigation claims;

Post Argument Discussion; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: August 10, 2017.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2017–17286 Filed 8–11–17; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81366; File No. SR–CHX–2016–20]**

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Regarding the Acquisition of CHX Holdings, Inc. by North America Casin Holdings, Inc.

August 9, 2017.

### I. Introduction

On December 2, 2016, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change in connection with the acquisition (''Transaction'') of CHX Holdings, Inc. (''CHX Holdings'') by North America Casin Holdings, Inc. (''NA Casin Holdings''). The proposed rule change was published for comment in the **Federal Register** on December 12, 2016.[3] On January 12, 2017, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[4] to determine whether to approve or disapprove the proposed rule change.[5] The Commission received 28 comments on the proposed rule change,[6] and three responses from the Exchange in response to certain comments.[7] On June 6, 2017, pursuant

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79474 (December 6, 2016), 81 FR 89543 (''Notice'').

[4] 15 U.S.C. 78s(b)(2)(B).

[5] *See* Securities Exchange Act Release No. 79781, 82 FR 6669 (January 19, 2017).

[6] *See* letters from: (1) Representative Robert Pittenger, Representative Earl L. ''Buddy'' Carter, Representative Peter DeFazio, Representative Collin Peterson, and Representative David Joyce, dated December 22, 2016 (''Pittenger Letter 1''); (2) James N. Hill, dated December 23, 2016; (3) John Ciccarelli, dated January 2, 2017 (''Ciccarelli Letter''); (4) Anonymous, dated January 3, 2017 (''Anonymous Letter''); (5) David E. Kaplan, Executive Director, Global Investigative Journalism Network, dated January 4, 2017; (6) Reddy Dandolu, Founder, Chief Executive Officer, Las Vegas Stock Exchange, dated February 4, 2017 (''Dandolu Letter''); (7) David Ferris, Senior Research Analyst, The Public Interest Review, dated February 16, 2017 (''Ferris Letter 1''); (8) Michael Brennan, Independent Market Commentator, dated February 17, 2017 (''Brennan Letter''); (9) Lawrence Bass, Individual Member, Alliance for American Manufacturing, dated February 20, 2017 (''Bass Letter''); (10) Steven Mayer, dated February 20, 2017 (''Mayer Letter''); (11) William Park, dated February 21, 2017 (''Park Letter''); (12) Jason Blake, Commentator, The Wall Street Journal, dated February 25, 2017; (13) John Meagher, Freelance Journalist, dated March 1, 2017; (14) Yong Xiao, Chief Executive Officer, North America Casin Holdings, Inc., dated March 1, 2017 (''NA Casin Holdings Letter''); (15) Steven Caban, dated March 1, 2017 (''Caban Letter''); (16) Harley Seyedin, President, American Chamber of Commerce in South China, dated March 2, 2017 (''Seyedin Letter''); (17) Salvatore Nobile, dated March 2, 2017 (''Nobile Letter''); (18) Olga Gouroudeva, dated March 3, 2017 (''Gouroudeva Letter''); (19) John R. Prufeta, dated March 3, 2017 (''Prufeta Letter''); (20) Anthony J. Saliba, Saliba Ventures Holdings, LLC, dated March 3, 2017 (''Saliba Letter''); (21) Aileen Zhong, dated March 5, 2017 (''Zhong Letter''); (22) Duncan Karcher, dated March 5, 2017 (''Karcher Letter''); (23) Ira Gottlieb, Principal, Healthcare Practice, Mazars USA LLP, dated March 5, 2017 (''Gottlieb Letter''); (24) James N. Hill, dated March 6, 2017 (''Hill Letter 2''); (25) David Ferris, Senior Research Analyst, The Public Interest Review, dated March 6, 2017 (''Ferris Letter 2''); (26) Sean Casey, dated April 24, 2017; (27) Representative Robert Pittenger, Representative Chris Smith, Representative Peter DeFazio, Representative Ted Yoho, Representative Rosa DeLauro, Representative Steve King, Representative Walter Jones, Representative David Joyce, Representative Brian Babin, Representative Bill Posey, and Representative Tom Marino, dated July 10, 2017 (''Pittenger Letter 2''); and (28) Senator Joe Manchin, III, dated July 20, 2017 (''Manchin Letter''). All of the comments are available at: *https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml*.

[7] *See* letters from John K. Kerin, President and Chief Executive Officer, CHX, dated January 5, 2017 (''CHX Response Letter 1''); Albert J. Kim, Vice President and Associate General Counsel, CHX, dated January 6, 2017 (''CHX Response Letter 2'') (responding specifically to the Ciccarelli Letter); and John K. Kerin, President and Chief Executive

to Section 19(b)(2) of the Exchange Act,[8] the Commission designated a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change.[9] On August 7, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[10] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Summary of the Proposal, As Modified by Amendment No. 1

Currently, the Exchange is a wholly-owned subsidiary of CHX Holdings, and CHX Holdings is beneficially owned by 193 firms or individuals, including certain Participants or affiliates of Participants.[11] Pursuant to the terms of an Agreement and Plan of Merger, dated February 4, 2016 (''Merger Agreement''), by and among NA Casin Holdings, Exchange Acquisition Corporation, Chongqing Casin Enterprise Group Co., LTD. (''Chongqing Casin''), Richard G. Pane solely in his capacity as the Stockholders Representative thereunder, and CHX Holdings, Exchange Acquisition Corporation would merge into CHX Holdings, which would then become a wholly-owned direct subsidiary of NA Casin Holdings.[12] Current CHX Holdings stockholders would receive the right to receive cash in exchange for their shares under the terms of the Transaction.[13] The Exchange would continue to be a wholly-owned subsidiary of CHX Holdings. Consummation of the Transaction is subject to the satisfaction of certain conditions precedent, including approval by the Commission of the proposed rule change.[14]

The Exchange represents that, after the closing of the Transaction, all of the outstanding and issued shares of NA Casin Holdings would be held by the following firms and individuals (referred to collectively as the ''upstream owners'') in the following percentages:

*Upstream Owners*

- NA Casin Group, Inc. (''NA Casin Group''), a corporation incorporated under the laws of the State of Delaware and wholly-owned by Chongqing Casin, a limited company organized under the laws of the People's Republic of China (''PRC'')—20%
- Chongqing Jintian Industrial Co., Ltd., a corporation incorporated under the laws of the PRC—15%
- Chongqing Longshang Decoration Co., Ltd., a corporation incorporated under the laws of the PRC—14.5%
- Castle YAC Enterprises, LLC (''Castle YAC''), a limited liability company organized under the laws of the State of New York, the sole member of which is Jay Lu,[15] a U.S. citizen and Vice President of NA Casin Group—19%
- Raptor Holdco LLC (''Raptor''), a limited liability company organized under the laws of the State of Delaware—11.75%
- Saliba Ventures Holdings, LLC (''Saliba''), a limited liability company organized under the laws of the State of Illinois—11.75%
- Xian Tong Enterprises, Inc., a corporation incorporated under the laws of the State of New York—6.94%

Officer, CHX, dated March 6, 2017 (''CHX Response Letter 3'').

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 80864, 82 FR 26966 (June 12, 2017).

[10] In Amendment No. 1, the Exchange modified its proposal to respond to concerns expressed by certain commenters. Specifically, in Amendment No. 1, the Exchange: (1) Amends the proposed certificates of incorporation of CHX Holdings and NA Casin Holdings to require that: (a) Owners of the corporation provide notice to the corporation of certain changes to their ownership levels, and that the Exchange provide the Commission notice of certain changes; (b) each person having voting rights or beneficial ownership of stock of the corporation to promptly provide the corporation with written notice of any change in its status as a related person of another person that owns voting share of stock of the corporation; and (c) each stockholder of the corporation to annually attest directly to the Commission and the corporation as to its equity ownership level in the corporation and the identity of its related persons and to whether any agreement to act together exists between the stockholder and any other person for the purpose of acquiring, voting, holding, or disposing of shares of stock of the corporation; (2) amends the certificate of incorporation of CHX Holdings to: (a) Require the chief compliance officer of CHX Holdings to monitor compliance with the limitations on voting and ownership applicable to all upstream beneficial owners, and to ensure that each beneficial owner of the corporation provides the corporation with certain annual attestations; and (b) require that CHX Holdings will engage an independent and Public County Accounting Oversight Board (''PCAOB'')-registered auditor that will perform within one year of the closing date of the Transaction and every two years thereafter, an audit of the corporation's oversight of compliance with the ownership and voting limitations; (3) amends the bylaws of CHX, CHX Holdings, and NA Casin Holdings to require that each corporation contemporaneously provides the Commission with any information it provides to any other U.S. governmental entity or U.S. authority pursuant to any agreement; (4) amends the CHX Rules to: (a) Require that, before reporting data to Consolidated Audit Trail (''CAT'') or having access to CAT data, it will adopt policies and procedures to ensure that only CHX regulatory personnel have access to any ''CAT Data'' (as defined in the National Market System Plan Governing the Consolidated Audit Trail approved by the U.S. Securities and Exchange Commission on November 15, 2016, as such plan may be amended from time to time) and that CHX regulatory personnel would not provide access to any CAT Data to (i) any personnel of CHX and CHX Holdings (except such personnel that may also be CHX regulatory personnel); (ii) any personnel of NA Casin Holdings; or (iii) any upstream beneficial owner, regardless of citizenship of such personnel and owners (except such personnel that may also be CHX regulatory personnel); (b) confirm that any regulatory services agreement (''RSA'') it may enter into would comply with the U.S. federal securities laws at the time of the execution and on an ongoing basis; (c) require the chief regulatory officer of CHX to monitor Exchange compliance with the provision of each RSA to which the Exchange is party; and (d) and require the Exchange to engage an independent and PCAOB-registered auditor to perform within one year of the closing date of the Transaction and every two years thereafter, an audit of the Exchange's oversight of: (i) All RSAs to which the Exchange is a party and (ii) compliance with the CHX rule restricting access to CAT Data to CHX regulatory personnel; (5) supplements certain of its representations with certifications from each owner of NA Casin Holdings, attesting to CHX and the Commission (a) the identities of all related persons, if any; (b) that it does not directly, or indirectly through one or more intermediaries, control, and is not, directly or indirectly through one or more intermediaries, controlled or owned by, or under common control or ownership with, a governmental entity or political subdivision thereof; (c) that it nor any of its related persons is subject to any ''statutory disqualification'' as defined in Section 3(a)(39) of the Exchange Act; and (d) that no agreement, arrangement, or understanding to acquire, vote, hold, or dispose of stock of NA Casin Holdings, exists between such owner and any of the other owners of NA Casin Holdings; (6) provides a statement from each of the owners of NA Casin Holdings in which such owner (a) irrevocably submits to the jurisdiction of the U.S. federal courts, the Commission, and CHX, for the purposes of any suit, action or proceeding relating to the certifications it provided to the Exchange and CHX regarding among other things, its related persons, or arising pursuant to the U.S. federal securities laws, or the rules and regulations thereunder, arising out of, or relating to, the activities of CHX, and waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the U.S. federal courts, the Commission or CHX, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency; (b) designates, authorizes and identifies to the Commission an agent in the U.S. for the service of process of a claim arising out of, or relating to, the activities of CHX, including the certificates it provided to the Exchange and the Commission; and (c) agrees to promptly inform the Commission in writing of any change to its designated and authorized agent; and (7) changes the name of one of the proposed upstream owners from ''Cheevers & Co., Inc.'' (''Cheevers'') to ''Penserra Securities, LLC'' (''Penserra'') to reflect that Cheevers merged with Penserra, with Penserra as the surviving entity. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml.*

[11] *See* Notice, *supra* note 3, 81 FR at 89544. *See also* CHX Rules Article 1, Rule 1(s) (defining ''Participant'').

[12] *See* Notice, *supra* note 3, 81 FR at 89544.

[13] *See id.*

[14] *See id.*

[15] According to the Exchange, Jay Lu is associated with an affiliate of Chongqing Casin and is the son of Shengju Lu, the Chairman of Chongqing Casin. *See* Notice, *supra* note 3, 81 FR at 89545, n.18. The Exchange represents that the only Related Persons among the upstream owners are Castle YAC and NA Casin Group. *See id.*

• Five members of the CHX Holdings management team, all U.S. citizens—0.88% (as equity incentives)

• Penserra, a limited liability company organized under the laws of the State of New York—0.18% [16]

After the closing of the Transaction, CHX would remain a national securities exchange, registered under Section 6 of the Exchange Act,[17] and a self-regulatory organization (''SRO''), as defined in Section 3(a)(26) of the Exchange Act.[18] In addition, following the closing, the Exchange's affiliated routing broker, CHXBD, would remain a Delaware limited liability corporation of which CHX Holdings would remain the sole member.

To effect the Transaction, the Exchange proposes to amend its certificate of incorporation and bylaws (''CHX Bylaws''),[19] the certificate of incorporation (''CHX Holdings Certificate'') and bylaws (''CHX Holdings Bylaws'') of CHX Holdings,[20] and the Exchange's rules.[21] The Exchange has also filed the following documents in connection with the Transaction: (1) the certificate of incorporation (''NA Casin Holdings Certificate'') and bylaws (''NA Casin Holdings Bylaws'') of NA Casin Holdings; [22] (2) text of a proposed resolution of CHX Holdings' board of directors to waive certain ownership and voting limitations to permit the Transaction; [23] (3) the proposed NA Casin Holdings Stockholders' Agreement,[24] which includes transfer-of-share provisions for the upstream owners that provide a right of first offer, a right to acquire interest upon change of control, and a right to purchase new securities; and (4) put agreements between Saliba, NA Casin Group, and NA Casin Holdings (''Saliba Put Agreement''),[25] and Raptor, NA Casin Group, and NA Casin Holdings (''Raptor Put Agreement''),[26] which would grant Saliba and Raptor, respectively, the right to compel NA Casin Holdings to purchase or arrange for an unspecified third-party to purchase a specified amount of Saliba's or Raptor's equity interest in NA Casin Holdings, respectively.

The Exchange proposes several substantive and technical amendments to its corporate governance documents, rules, and the governing documents of CHX Holdings. Among other items, the proposed amendments revise provisions in the CHX Holdings Certificate relating to ownership and voting limitations.[27] In addition, to govern the upstream owners, the Exchange proposes to establish in the NA Casin Holdings' Certificate ownership and voting limitations that are identical to those contained in the proposed CHX Holdings documents.[28] In particular, these provisions prohibit any Person,[29] either alone or with its Related Persons,[30] from beneficially owning shares of stock of CHX Holdings or NA Casin Holdings representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter unless specific procedures are followed prior to acquiring shares in excess of the ownership limitation.[31] In addition, no Participant, either alone or with its Related Persons, would be permitted at any time to beneficially own shares of stock of CHX Holdings or NA Casin Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[32] Further, no Person that is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act would be permitted at any time to beneficially own, either alone or with its Related Persons, shares of stock of CHX Holdings or NA Casin Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[33] CHX also proposes cure provisions that would require CHX Holdings or NA Casin Holdings, as applicable, to call shares held in excess of these ownership limits, and to not register any shares transferred in violation of these

[16] *See id.* at 89544–55; *see* Amendment No. 1, *supra* note 10, at 7 (explaining that Cheevers merged with Penserra, with Penserra as the surviving entity).

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78c(a)(26).

[19] *See* Exhibits 5C and 5D. All Exhibits to the proposed rule change are available at: *https://www.sec.gov/rules/sro/chx/chxarchive/chxarchive2016.shtml.*

[20] *See* Exhibits 5A and 5B.

[21] *See* Exhibit 5E. The current CHX Holdings Certificate and CHX Holdings Bylaws require that, for so long as CHX Holdings controls the Exchange, either directly or indirectly, any changes to the CHX Holdings Certificate or CHX Holdings Bylaws must be submitted to the board of directors of the Exchange and, if the Exchange's board determines that the change must be filed with, or filed with and approved by, the Commission under Section 19 of the Exchange Act and the rules thereunder, then the changes will not be effective until filed with, or filed with and approved by, the Commission. *See* Article THIRTEENTH of the current CHX Holdings Certificate; and Article VIII of the current CHX Holdings Bylaws. Section 19(b) of the Exchange Act and Rule 19b–4 thereunder require an SRO to file proposed rule changes with the Commission. Although CHX Holdings is not an SRO, its certificate of incorporation and bylaws are rules of the Exchange if they are stated policies, practices, or interpretations (as defined in Rule 19b–4 under the Exchange Act) of the exchange, and must therefore be filed with the Commission pursuant to section 19(b)(4) of the Exchange Act and Rule 19b–4 thereunder. Accordingly, the Exchange filed the CHX Holdings Certificate and CHX Holdings Bylaws with the Commission.

[22] *See* Exhibits 5F and 5G. The proposed NA Casin Holdings Certificate and NA Casin Holdings Bylaws require that, for so long as NA Casin Holdings controls the Exchange, either directly or indirectly, any change to those documents must be submitted to the board of directors of the Exchange and, if the Exchange's board determines that the change must be filed with, or filed with and approved by, the Commission under Section 19 of the Exchange Act and the rules thereunder, then the changes will not be effective until filed with, or filed with and approved by, the Commission. *See* proposed NA Casin Holdings Certificate, Article X; proposed NA Casin Holdings Bylaws, Article 11. Although NA Casin Holdings is not an SRO, its certificate of incorporation and bylaws are rules of the Exchange if they are stated policies, practices, or interpretations (as defined in Rule 19b–4 under the Exchange Act) of the exchange, and must therefore be filed with the Commission pursuant to section 19(b)(4) of the Exchange Act and Rule 19b–4 thereunder. Accordingly, the Exchange filed the NA Casin Holdings Certificate and NA Casin Holdings Bylaws with the Commission.

[23] *See* Exhibit 5H.

[24] *See* Exhibit 5I.

[25] *See* Exhibit 5J.

[26] *See* Exhibit 5K.

[27] *See infra* Section III.A.

[28] *See id.*

[29] The NA Casin Holdings Certificate and CHX Holdings Certificate define ''Person'' to mean ''a natural person, partnership (general or limited), corporation, limited liability company, trust or unincorporated organization, or a governmental entity or political subdivision thereof.'' *See* proposed CHX Holdings Certificate Article FOURTH, Section (b); proposed NA Casin Holdings Certificate Article IX, Section (4).

[30] CHX proposes to define the term ''Related Persons'' in the NA Casin Holdings Certificate and CHX Holdings Certificate to mean: (1) With respect to any Person, any executive officer (as such term is defined in Rule 3b–7 under the Exchange Act), director, general partner, manager or managing member, as applicable, and all ''affiliates'' and ''associates'' of such Person (as those terms are defined in Rule 12b–2 under the Exchange Act), and other Person(s) whose beneficial ownership of shares of stock of NA Casin Holdings or CHX Holdings, as applicable, with the power to vote on any matter would be aggregated with such first Person's beneficial ownership of such stock or deemed to be beneficially owned by such first Person pursuant to Rules 13d–3 and 13d–5 under the Exchange Act; and (2) in the case of any Participant, for so long as CHX remains a registered national securities exchange, such Person and any broker or dealer with which such Person is associated; and (3) any other Person(s) with which such Person has any agreement, an arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of NA Casin Holdings or CHX Holdings, as applicable; and (4) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse, who has the same home as such Person or who is a director or officer of NA Casin Holdings or CHX Holdings, as applicable, or any of its parents or subsidiaries. *See* proposed CHX Holdings Certificate Article FOURTH, Section (b); and proposed NA Casin Holdings Certificate Article IX, Section (4).

[31] *See* proposed CHX Holdings Certificate Article FOURTH, Section (c)(i); and proposed NA Casin Holdings Certificate Article IX, Section (9).

[32] *See* proposed CHX Holdings Certificate Article FOURTH, Section (c)(ii); proposed NA Casin Holdings Certificate Article IX, Section (10).

[33] *See* proposed CHX Holdings Certificate Article FOURTH, Section (d); and proposed NA Casin Holdings Certificate Article IX, Section (13).

ownership limits.[34] These restrictions are described herein as the ''ownership limitations.''

In addition, both the CHX Holdings Certificate and NA Casin Holdings Certificate contain voting restrictions that would preclude any stockholder, either alone or with its Related Persons, from voting more than 20% of the then outstanding shares entitled to be cast on any matter unless specific procedures are followed prior to voting in excess of the limitation.[35] Similarly, no Person, either alone or with its Related Persons, would be permitted to enter into an agreement, plan, or other arrangement that would result in an aggregate of more than 20% of the then outstanding votes entitled to be cast on a matter to not be voted unless specific procedures are followed prior to entering into such an agreement, plan, or arrangement.[36] The certificates of incorporation would also require that CHX Holdings and NA Casin Holdings disregard any votes cast in excess of the voting limitations.[37] These restrictions are described herein as the ''voting limitations.''

In addition, the Exchange has proposed revisions to the corporate governance documents of NA Casin Holdings and CHX Holdings to provide notice requirements with respect to changes in ownership that may affect the ownership and voting limitations. Specifically, the NA Casin Holdings Certificate and CHX Holdings Certificate will provide that: (1) Each Person involved in an acquisition for shares of stock of the corporation shall provide the corporation with written notice 14 days prior to the closing date of any acquisition that would result in a Person having voting rights or beneficial ownership, alone or together with its Related Persons, of record or beneficially, of five percent or more of the then outstanding shares of stock of the corporation entitled to vote on any matter; (2) NA Casin Holdings and CHX Holdings will be required to provide 10-day advance written notice to the Commission of any such changes in ownership; (3) any Person that, either alone or together with its Related Persons, has voting rights or beneficial ownership of, five percent or more of the outstanding voting shares of CHX Holdings or NA Casin Holdings (whether by acquisition or by change in the number of shares outstanding or otherwise), will be required, immediately upon acquiring knowledge of its ownership, to give the board of directors of CHX Holdings or NA Casin Holdings, as applicable, notice of such ownership; (4) any Person that, either alone or together with its Related Persons, of record or beneficially, has voting rights or beneficial ownership of five percent or more of NA Casin Holdings or CHX Holdings must promptly update the corporation if its ownership stake in or voting power regarding NA Casin Holdings or CHX Holdings increases or decreases by one percent or more;[38] and (5) each Person having voting rights or beneficial ownership of stock of the NA Casin Holdings or CHX Holdings will be required to provide prompt written notice to the corporation regarding any changes to its Related Person status with respect to other Persons that own voting shares of stock of the corporation.[39]

Furthermore, CHX is amending the CHX Holdings Bylaws,[40] CHX Bylaws,[41] and NA Casin Holdings Bylaws,[42] to adopt provisions in each respective document to require that each of CHX Holdings, CHX, and NA Casin Holdings, as applicable, contemporaneously provide the Commission with any information it provides to any other U.S. governmental entity or U.S. authority pursuant to any agreement.

The proposed rule change also includes changes to CHX Holdings' and the Exchange's certificates of incorporation and bylaws addressing, among other items, board and committee composition and procedures, procedures regarding stockholder meetings, consent to U.S. federal court and Commission jurisdiction, and Commission access to certain corporate books and records.[43] The proposed rule change also adopts provisions in the new NA Casin Holdings Certificate and NA Casin Holdings Bylaws relating to these matters.[44]

## III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, comments on the proposal, and the commitments undertaken by the Exchange in Amendment No. 1, which was filed to respond to comments.[45] The Commission has also considered additional information provided by the Exchange, some of which was provided on a confidential basis. Based on this consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[46] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(1) and 6(b)(3) of the Exchange Act,[47] which require, among other things, that: (1) A national securities exchange be organized and have the capacity to be able to carry out the purposes of the Exchange Act and to enforce compliance by its members and persons associated with its members with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange; and (2) the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission also finds that the proposal is consistent with Section 6(b)(5) of the Exchange Act,[48] which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that, as discussed below, several commenters assert that the proposed rule change is inconsistent with Sections 6(b)(1) and 6(b)(5) of the Exchange Act because they believe that the proposed ownership structure is opaque and therefore it would be difficult for the Exchange to monitor for compliance with the Exchange Act and the rules of the Exchange,[49] and for the Commission to exercise regulatory oversight, following

[34] *See* proposed CHX Holdings Certificate Article FOURTH, Sections (c)(i)(C), (c)(ii)–(iii), and (d); proposed NA Casin Holdings Certificate Article IX, Sections (9)(iii), (10), (11), and (13).

[35] *See* proposed CHX Holdings Certificate FOURTH (b)(i); and proposed NA Casin Holdings Certificate Article IX, Section (5).

[36] *See id.*

[37] *See id.*

[38] *See* proposed NA Casin Holdings Certificate Article IX, Section (19)(i); proposed CHX Holdings Certificate Article Fourth(g)(i).

[39] *See* proposed NA Casin Holdings Certificate Article IX, Section (19)(ii); proposed CHX Holdings Certificate Article Fourth(g)(ii).

[40] *See* proposed CHX Holdings Bylaws, Article XIII, Section 13.1.

[41] *See* proposed CHX Bylaws, Article XIII, Section 13.1

[42] *See* proposed NA Casin Holdings Bylaws, Article 10, Section 10.1.3.

[43] *See infra* Sections III.A and III.B.

[44] *See id.*

[45] *See* Amendment No. 1, *supra* note 10, at 5.

[46] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[47] 15 U.S.C. 78f(b)(1) and f(b)(3).

[48] 15 U.S.C. 78f(b)(5).

[49] *See infra* note 85 and accompanying text.

the closing of the Transaction.[50] After careful consideration, as discussed further below, the Commission believes that the commenters' concerns are adequately addressed by the following safeguards: The ownership and voting limitations as well as the related monitoring provisions and related remedies; the notice requirements regarding changes in ownership and Related Person relationships; provisions relating to compliance with U.S. law; consents to jurisdiction; requirements to give due regard to the regulatory obligations and functions of the Exchange; and provisions ensuring access to books and records.[51]

*A. Voting and Ownership Limitations; Consent to Jurisdiction; Due Regard; Books and Records*

As noted above,[52] under the terms of the Transaction, CHX will continue to be a wholly-owned subsidiary of CHX Holdings, and CHX Holdings will become a wholly-owned subsidiary of NA Casin Holdings. Furthermore, NA Casin Holdings will be owned by a consortium of both U.S. and non-U.S. entities.[53]

The rules of each exchange provide for limitations on ownership and voting rights, which are designed to prevent any stockholder from exercising undue control over the operation of an exchange and to assure that the exchange and the Commission are able to carry out their regulatory obligations under the Exchange Act. Here, CHX represents that the CHX Holdings Certificate and the NA Casin Holdings Certificate contain substantially identical ownership and voting limitations (other than the requirement that NA Casin Holdings take reasonable to steps to cause CHX Holdings to be in compliance with the voting and ownership limitations contained in the CHX Holdings Certificate).[54] Under the proposal, the board of directors of CHX Holdings would waive CHX Holdings' 40% ownership limitation with respect to the proposed acquisition by NA Casin Holdings so that NA Casin Holdings could own 100% of CHX Holdings.[55] But the relevant ownership and voting limitations will be contained in the NA Casin Holdings Certificate. The Commission notes that these limitations are designed to prevent any stockholder from exercising undue control over the operation of CHX and to assure that CHX and the Commission are able to carry out their regulatory obligations under the Exchange Act. The proposed governing documents of CHX Holdings and NA Casin Holdings contain provisions relating to compliance with U.S. law, consent to jurisdiction, due regard to the regulatory obligations and functions of the Exchange, and books and records that are designed to address CHX's ability to carry out its regulatory obligations and the Commission to exercise its regulatory oversight over CHX after the acquisition.

1. Proposed Ownership and Voting Limitations

With regard to ownership, the NA Casin Holdings Certificate restricts the ability of any Person, either alone or with its Related Persons, to vote or own shares of stock of NA Casin Holdings above certain thresholds. Specifically, the NA Casin Holdings Certificate provides that unless otherwise provided, no Person, either alone or with its Related Persons, shall be permitted at any time to beneficially own shares of stock of NA Casin Holdings representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter.[56] In addition, the NA Casin Holdings Certificate prohibits any Participant, either alone or with its Related Persons, from beneficially owning shares of stock of NA Casin Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[57] The NA Casin Holdings Certificate also prohibits a Person that is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act from at any time beneficially owning, either alone or with its Related Persons, shares of stock of NA Casin Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[58]

The NA Casin Holdings Certificate provides that if any Person, either alone or with its Related Persons, intends on acquiring ownership in excess of these ownership limitations, such Person must provide the board of directors of NA Casin Holdings with advance notice, the board must adopt a resolution permitting such ownership, and such resolution must be filed with and approved by the Commission under Section 19(b) of the Exchange Act.[59] In addition, the NA Casin Holdings and CHX Holdings Certificates both provide that the Commission will be given prior notice of any acquisition that would result in a Person, alone or together with its Related Persons, owning or voting five percent or more of the voting stock of the NA Casin Holdings or CHX Holdings, as applicable.[60]

In addition, the NA Casin Holdings Certificate provides that, if any Person, either alone or with its Related Persons, at any time beneficially owns shares of stock of NA Casin Holdings in excess of the ownership limitations described above and such proposed ownership has not been approved by the board of directors of NA Casin Holdings and the Commission in accordance with the NA Casin Holdings Certificate,[61] NA Casin Holdings will call from such Person and its Related Persons the number of shares of stock of NA Casin Holdings entitled to vote on any matter that exceeds the ownership limitation at a price equal to the par value of the shares of stock.[62] In addition, the NA Casin Holdings Certificate provides that NA Casin Holdings will not register the purported transfer of any shares of its stock in violation of the 40% ownership limitation set forth in Article IX, Section (9).[63]

The NA Casin Holdings Certificate also contains voting restrictions. It provides that no Person, either alone or with its Related Persons, as of any record date for the determination of stockholders entitled to vote on any matter, shall be entitled to vote or cause the voting of shares of stock of NA Casin Holdings, in person or by proxy or through any voting agreement or other arrangement, to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on such matter.[64] The NA Casin Holdings Certificate also provides that NA Casin Holdings will disregard any votes cast in excess of the voting limitation.[65] Further, the NA Casin Holdings Certificate requires NA Casin Holdings to take reasonable steps necessary to cause CHX Holdings to comply with the voting and ownership

[50] *See infra* notes 91–95 and accompanying text.

[51] *See infra* Section III.A.

[52] *See supra* notes 12–14 and accompanying text.

[53] *See supra* note 16 and accompanying text.

[54] *See supra* notes 28–37 and accompanying text.

[55] *See infra* Section III.D.

[56] *See* proposed NA Casin Holdings Certificate Article IX, Section (9).

[57] *See* proposed NA Casin Holdings Certificate Article IX, Section (10).

[58] *See* proposed NA Casin Holdings Certificate Article IX, Section (13).

[59] *See* proposed NA Casin Holdings Certificate Article IX, Section (9)(i)–(ii).

[60] *See* proposed NA Casin Holdings Certificate Article IX, Section (19)(i); proposed CHX Holdings Certificate Article FOURTH(g)(i).

[61] *See* proposed NA Casin Holdings Certificate Article IX, Section (9)(i)–(ii).

[62] *See* proposed NA Casin Holdings Certificate Article IX, Sections (9)(iii), (10), and (13).

[63] *See* proposed NA Casin Holdings Certificate Article IX, Section (11).

[64] *See* proposed NA Casin Holdings Certificate Article IX, Section (5).

[65] *See id.*

limitations set forth in the CHX Holdings Certificate.[66]

Relevant to the ownership and voting limitations, the Exchange represents that the only Related Persons among the upstream owners are Castle YAC and NA Casin Group.[67] Together, Castle YAC and NA Casin Group would hold a 39% ownership interest in NA Casin Holdings, which is lower than the 40% ownership limitation. In addition, they would not be permitted to exercise their collective voting interest in excess of the 20% voting limitation. In connection with the proposed rule change, the Exchange has submitted to the Commission and to CHX a certification from each of the upstream owners attesting: (1) To the identities of its Related Persons; (2) that such owner does not directly, or indirectly through one or more intermediaries, control, and is not, directly or indirectly through one or more intermediaries, controlled or owned by, or under common control or ownership with, a governmental entity or political subdivision thereof; (3) that no agreement, arrangement, or understanding for the purpose of acquiring, voting, holding, or disposing of stock of NA Casin Holdings exist between the stockholder and any of the upstream owners; and (4) that neither such owner nor any of its Related Persons is subject to any applicable ''statutory disqualification'' as defined in Section 3(a)(39) of the Exchange Act.[68]

In addition, by September 1, 2018, and for every year thereafter, each stockholder of NA Casin Holdings and CHX Holdings would be required to submit to the Commission and the corporation an attestation regarding: (1) Its equity ownership level in the corporation and the identity of its Related Persons and (2) the existence of any agreement, arrangement or understanding (whether or not in writing) between the stockholder and any other person to act together for the purpose of acquiring, voting, holding or disposing of shares of stock of the corporation.[69] The Exchange further represents that the NA Casin Holdings Stockholders' Agreement and the Raptor and Saliba put agreements would not violate the proposed ownership and voting limitations.[70]

2. Proposed Provisions on Consent to Jurisdiction; Books and Records; Due Regard

Proposed Article IX, Section 2 of the NA Casin Holdings Certificate and proposed Section 3.4 of the CHX Holdings Bylaws provide that each of NA Casin Holdings and CHX Holdings, respectively, and its officers, directors, employees, and agents, by virtue of their acceptance of their positions, shall comply with the federal securities laws and rules and regulations thereunder and shall cooperate, and shall take reasonable steps necessary to cause its agents to cooperate, with respect to such agents' activities related to CHX, with the Commission and the Exchange, pursuant to, and to the extent of, CHX's regulatory authority. In addition, pursuant to proposed Article 10, Section 10.1 of the NA Casin Holdings Bylaws and Article III, Section 3.5 of the CHX Holdings Bylaws, each entity and its officers, directors, employees, and agents, by virtue of their acceptance of their positions, submit to the jurisdiction of the U.S. federal courts, the Commission, and the Exchange, and agree to maintain an agent in the U.S. for service of process of a claim arising out of, or relating to, the activities of the Exchange.

In addition, CHX has filed a statement from each of the upstream owners in which each such owner (1) irrevocably submits to the jurisdiction of the U.S. federal courts, the Commission, and CHX, for the purposes of any suit, action or proceeding relating to the certification it provided to the Commission and CHX arising pursuant to the U.S. federal securities laws, or the rules and regulations thereunder, arising out of, or relating to, the activities of CHX, and waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the U.S. federal courts, the Commission or CHX, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency; (2) designates, authorizes and identifies to the Commission an agent in the U.S. for the service of process of a claim arising out of, or relating to, the activities of CHX, including the certificates provided to CHX and the Commission regarding, among other things, its ownership level and Related Person status; and (3) agrees to promptly inform the Commission in writing of any change to its designated and authorized agent.[71]

CHX Holdings also proposes to amend its certificate of incorporation to state that its chief compliance officer shall (1) monitor compliance with the ownership and voting limitations applicable to all upstream beneficial owners and (2) ensure that each beneficial owner of the corporation provides certain annual attestations.[72] The CHX Holdings Certificate also provides that CHX Holdings shall engage an independent and PCAOB-registered auditor that will perform within one year of the closing date of the Transaction, and every two years thereafter, an audit of CHX Holdings' oversight of compliance with the ownership and voting limitations.[73]

Proposed Article IX, Section 3 of the NA Casin Holdings Certificate and proposed Article III, Section 3.1 of the CHX Holdings Bylaws require that, for as long as NA Casin Holdings and CHX Holdings control the Exchange, each of NA Casin Holdings and CHX Holdings, respectively, and its board of directors, officers, employees, and agents, shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and to its obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors of the Exchange relating to its regulatory functions (including enforcement and disciplinary matters) or the structure of the market

[66] *See* proposed NA Casin Holdings Certificate Article IX, Section (4).

[67] *See supra* note 15.

[68] *See* Amendment No. 1, *supra* note 10 at Exhibit 2.

[69] *See* Amendment No. 1, *supra* note 10, at 9–10 (*see* CHX Holdings Certificate, Article FOURTH(h); NA Casin Holdings Certificate, Article IX, Section (20)).

[70] *See* Notice, *supra* note 3, 81 FR at 89545. The put agreements contemplate that the closing of the purchase of shares pursuant to the put agreements may be delayed in the event that the parties need to seek regulatory approval. *See* Saliba Put Agreement, Section 3(c); Raptor Put Agreement, Section 3(c). In accordance with Article IX, Section (9) of the NA Casin Holdings Certificate, if exercise of the put agreements would result in any party owning more than 40% of the outstanding voting stock in NA Casin Holdings, the parties would need to seek approval of NA Casin Holdings' board of directors to waive the 40% ownership limitation and the proposed rule change approving such waiver would need to be filed with and approved by the Commission. Therefore, before the exercise of the put rights could close and transfer shares in violation of the 40% ownership limitation, the Commission would have an opportunity to evaluate whether the transfer of shares would be consistent with the Exchange Act. Accordingly, these put rights should not result in any entity holding over 40% of ownership without first receiving Commission approval.

[71] *See* Amendment No. 1, *supra* note 10, at Exhibit 2.

[72] *See* Amendment No. 1, *supra* note 10, at 10; proposed CHX Holdings Certificate, Article FOURTH(i)(i).

[73] *See* Amendment No. 1, *supra* note 10, at 10; proposed CHX Holdings Certificate, Article FOURTH(i)(ii).

that the Exchange regulates or that would interfere with the ability of the Exchange to carry out its responsibilities under the Exchange Act.

Proposed Article IX, Sections 3 and 17 of the NA Casin Holdings Certificate and proposed Sections 3.1 and 3.3 of the CHX Holdings Bylaws provide that each entity's respective books and records related to the activities of the Exchange will be maintained within the U.S. Proposed Article IX, Section 17 of the NA Casin Holdings Certificate and proposed Section 3.3 of the CHX Holdings Bylaws also provide that for so long as NA Casin Holdings and CHX Holdings control, directly or indirectly, the Exchange, the books, records, premises, officers, directors, and employees of the NA Casin Holdings and CHX Holdings, respectively, will be deemed to be the books, records, premises, officers, directors, and employees of the Exchange for the purposes of and subject to oversight pursuant to the Exchange Act, but only to the extent that such books and records are related to, or such officers, directors, and employees are involved in, the activities of the Exchange. These provisions further provide that the NA Casin Holdings and CHX Holdings books and records relating to the activities of Exchange will also be subject at all times to inspection and copying by the Commission and the Exchange. In addition, proposed Article IX, Section 16 of the NA Casin Holdings Certificate and proposed Article III, Section 3.2 of the CHX Holdings Bylaws require each entity to maintain the confidentiality of all confidential information pertaining to the self-regulatory functions of the Exchange (including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange that come into the possession of each entity and preclude each entity from using such confidential information for any non-regulatory purpose.[74]

Finally, proposed Article IX, Section 18 of the NA Casin Holdings Certificate and proposed Article III, Section 3.7 of the CHX Holdings Bylaws provide that for so long as a stockholder shall maintain a direct or indirect equity interest in the Exchange: (1) The books, records, officers, directors (or equivalent), and employees of the stockholder shall be deemed to be the books, records, officers, directors, and employees of the Exchange for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of the Exchange; (2) the stockholder's books and records related to the activities of the Exchange shall at all times be made available for inspection and copying by the Commission and the Exchange; and (3) the stockholder's books and records related to the activities of the Exchange shall be maintained within the United States.

CHX also proposes to amend its rules to require the Exchange to confirm that any RSA to which the Exchange is a party must comply with the U.S. federal securities laws, and the rules and regulations thereunder, at the time of the execution of the RSA and on an ongoing basis.[75] In addition, CHX is amending its rules to require that its chief regulatory officer monitor Exchange compliance with the provisions of each RSA to which the Exchange is a party.[76] CHX also proposes to amend its rules to require that, before reporting data to CAT or having access to CAT Data, the Exchange will adopt policies and procedures to ensure that only CHX ''Authorized Personnel'' [77] have access to any CAT Data, and that CHX regulatory personnel would not provide access to any CAT Data to the following persons, regardless of citizenship: (1) Any personnel of CHX and CHX Holdings that are not Authorized Personnel; (2) any personnel of NA Casin Holdings; or (3) any upstream beneficial owners of the Exchange that are not Authorized Personnel.[78] Further, CHX proposes to amend its rules to provide that it will engage an independent and PCAOB-registered auditor that would perform, within one year after the closing of the Transaction and every two years thereafter, an audit of CHX's oversight of: (1) Any RSA; and (2) compliance with the policies and procedures relating to access to CAT Data.[79]

3. Summary of Comments and the Exchange's Response

The Commission received comments regarding the proposed rule change generally, and the ownership and voting limitations and corporate governance provisions in particular. First, several commenters express concern about the proposed ownership structure of CHX following the close of the Transaction as it relates to the ownership and voting limitations. Some of these commenters question the identities of the proposed upstream owners and the validity of the Exchange's representation that there are no Related Persons among the proposed upstream owners other than Castle YAC and NA Casin Group.[80] Several commenters also question the Exchange's representations regarding the backgrounds and identities of the upstream owners.[81] In addition, commenters assert that contrary to the Exchange's representations, several of the proposed upstream owners may be affiliated.[82] Some of these commenters state that, after the closing of the Transaction, approximately 99% of the voting stock in CHX would be controlled by what the commenters believe to be Chinese entities or affiliated shell nominees.[83] Several of these commenters state that they believe that the post-Transaction ownership would deviate from the 40% ownership limitation.[84]

Several commenters also opine that the proposed upstream ownership of

[74] These provisions also state that they shall not be interpreted as to limit or impeded the rights of the Commission or the Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations promulgated thereunder or the ability of any officers, directors, employees or agents of each entity to disclose such confidential information to the Commission or the Exchange.

[75] *See* proposed CHX Rules Article 24, Rule 2(a).

[76] *See* proposed CHX Rules Article 24, Rule 2(b).

[77] For purposes of proposed CHX Rule Article 24, Rule 1, CHX defines ''Authorized Personnel'' to mean (1) regulatory, compliance and legal personnel of the Exchange and (2) information technology personnel of the Exchange working under the supervision of regulatory, compliance or legal personnel of the Exchange.

[78] *See* proposed CHX Rules Article 24, Rule 1(b).

[79] *See* proposed CHX Rules Article 24, Rule 3(a).

[80] *See* Ciccarelli Letter, *supra* note 6; Ferris Letter 1, *supra* note 6; Ferris Letter 2, *supra* note 6; Brennan Letter, *supra* note 6; Mayer Letter, *supra* note 6; Bass Letter, *supra* note 6, at 2–4. Another commenter asserts: ''[m]urky Chinese ownership laws, poor property ownership rights and deficient IP protection rules'' make it ''unclear who would actually own CHX under Chinese law.'' *See* Park Letter, *supra* note 6, at 4.

[81] *See* Ciccarelli Letter, *supra* note 6, at 2–9; Mayer Letter, *supra* note 6; Brennan Letter, *supra* note 6, at 1–2; Ferris Letter 1, *supra* note 6, at 2–3; Ferris Letter 2, *supra* note 6, at 1–3; Park Letter, *supra* note 6, at 2; and Bass Letter, *supra* note 6, at 2–4.

[82] *See* Ciccarelli Letter, *supra* note 6, at 2–3; Ferris Letter 1, *supra* note 6, at 2–3; Bass Letter, *supra* note 6, at 2; and Ferris Letter 2, *supra* note 6, at 4. *See also* Mayer Letter, *supra* note 4 (asserting that certain of the proposed upstream owners are shell companies put in place by Chongqing Casin to avoid ''explicit violation'' of the 40% ownership limitation, and should be examined for independence from Chongqing Casin).

[83] *See* Ciccarelli Letter, *supra* note 6, at 1–2. *See also* Ferris Letter 2, *supra* note 6, at 4; and Bass Letter, *supra* note 6, at 3.

[84] *See* Brennan Letter, *supra* note 6, at 1; Ciccarelli Letter, *supra* note 6, at 2; Ferris Letter 1, *supra* note 6, at 1; Bass Letter, *supra* note 6, at 1; Ferris Letter 2, *supra* note 6, at 4.

CHX is opaque.[85] Some of these commenters state their views that approval of the proposal would promote the improper consolidation of ownership and coordinate voting control over CHX, and also materially harm the public trust in the independent and objective operation of U.S. capital markets.[86] These commenters believe that the Transaction would concentrate ownership and voting power under Chongqing Casin and its ''coordinate'' investment entities in China, and with little or no insight and transparency into what the commenters state are government-dominated Chinese markets, the commenters believe that the Commission will be unable to monitor the ownership structure of Chongqing Casin after approval.[87] The commenters believe that this scenario would leave CHX open to undue, improper, and possibly state driven influence via coordinated voting control by its upstream ownership.[88] In addition, one commenter states that as a result of the proposed ownership, there would be ''reputational risks'' for CHX, and that ''compliance frustrations'' related to the Foreign Corrupt Practices Act and Anti-Money Laundering rules would be at the ''front and center'' in the Commission's oversight of CHX.[89] Accordingly, the commenters state that, given these actual or potential outcomes, the Transaction appears inconsistent with Sections 6(b)(l) and 6(b)(5) of the Exchange Act.[90]

Commenters also express concern about the ability of the Commission to exercise regulatory oversight over the Exchange following the closing of the Transaction.[91] One commenter questions whether the Commission can effectively regulate the Exchange and protect the market from abuses if the Commission staff does not know, and cannot independently confirm, the backgrounds of what the commenter characterizes as ''Chinese shell companies'' involved in the Transaction.[92] Another commenter argues that for the sake of the public interest, the Commission should take extreme caution in reviewing the proposed rule change and reject the Exchange's representations, which the commenter believes to be misleading.[93]

In response to these concerns, the Exchange states that it has not misrepresented any facts regarding the Transaction.[94] It also states that 50.5% of CHX will be indirectly owned by U.S. citizens.[95] The Exchange reaffirms the representations that it made in the Notice that the only Related Persons among the upstream owners are Castle YAC and NA Casin Group, that there are no other Related Persons among the upstream owners, and that none of the upstream owners directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a governmental entity or subdivision thereof.[96] The Exchange asserts that each of these representations is supported by an opinion of counsel provided to the Commission by outside counsel for CHX on a confidential basis.[97] The Exchange, NA Casin Holdings, and one of the proposed upstream owners also assert that some of the comment letters contain false accusations regarding the identity, ownership, relationships, and business activities of certain upstream owners.[98] In addition, the Exchange, NA Casin Holdings, and two other commenters assert that the proposed upstream owners are reputable businesses.[99]

Moreover, the Exchange asserts that it provided detailed information regarding the upstream owners to the Committee for Foreign Investment in the United States (''CFIUS'') and the Exchange asserts that CFIUS determined that there are no unresolved national security concerns with respect to the Transaction.[100] In response to this assertion, some of the commenters state that CFIUS's approval of the Transaction has no relevance to the Commission's determination because CFIUS's review focuses solely on national security concerns, and does not relate to the ownership and voting restrictions applicable to exchanges.[101] The Exchange responds that, with respect to the financial services sector, CFIUS review involves an examination of the potential disruptions to U.S. stock markets or the U.S. financial system as a whole, cybersecurity vulnerabilities, and the vulnerabilities associated with the fact that the U.S. business obtains and preserves personal information.[102] The Exchange also states that CFIUS review includes a full and detailed assessment of the foreign investing entities, including all of their individual senior executives and major stockholders, and the extent of any foreign government control over the investors.[103] The Exchange again asserts that CFIUS conducted a thorough, deep, and wide-ranging investigation of the Transaction and the proposed upstream owners, and that it concluded that there were no unresolved national security concerns.[104]

Furthermore, commenters express concern about whether the Chinese government could have influence or control over the Exchange and its upstream owners.[105] Some of these commenters assert that one of the proposed upstream owners has ties to the Chinese government.[106] Several commenters question whether the Chinese government could influence

[85] *See* Pittenger Letter 2, *supra* note 6, at 1; Bass Letter, *supra* note 6 at 1–5; Mayer Letter, *supra* note 6; Ciccarelli Letter, *supra* note 6, at 1–4; Ferris Letter 1, *supra* note 6, at 1–4; Ferris Letter 2, *supra* note 6, at 1–5. *See also* Hill Letter 2, *supra* note 6 (stating that ''it is easy to become confused about exactly who wants to own this exchange'').

[86] *See* Pittenger Letter 2, *supra* note 6, at 1.

[87] *See id.*

[88] *See* Pittenger Letter 2, *supra* note 6, at 1.

[89] *See* Park Letter, *supra* note 6, at 3. *See also* Ferris Letter 2, *supra* note 6, at 2 (stating that concerns over possible money laundering are not addressed by NA Casin, therefore are conceded).

[90] *See id.*

[91] *See* Pittenger Letters 1 and 2, *supra* note 6, at 2; Ciccarelli Letter, *supra* note 6, at 1–2; Bass Letter, *supra* note 6, at 1; and Ferris Letter 1, *supra* note 6, at 4.

[92] *See* Brennan Letter, *supra* note 6, at 1. In addition, three commenters express concern about the source of funding for the Transaction. *See* Park Letter, *supra* note 6, at 2–3 (stating that none of foreign upstream owners are on the published State Administration of Foreign Exchange's list of entities that ''have applied and received approvals for foreign currencies'' and questioning the legitimacy of the funds being used to pay for the Transaction); Ferris Letter 1, *supra* note 6, at 2; Ferris Letter 2, *supra* note 6, at 3; and Bass Letter, *supra* note 6, at 3.

[93] *See* Ferris Letter 1, *supra* note 6, at 4.

[94] *See* CHX Response Letter 2, *supra* note 7, at 2, 5–6. The Exchange states that, as described in the Notice, Xian Tong Enterprises, Inc. and Castle YAC are controlled by U.S. citizens, *Quiling Luo and Jay Lu, respectively. See id.* at 4–6.

[95] *See id.* at 2.

[96] *See id. at 5.*

[97] *See id.*

[98] *See* CHX Response Letter 3, *supra* note 7, at 3–5; Saliba Letter, *supra* note 6, at 2; NA Casin Holdings Letter, *supra* note 6, at 7.

[99] *See* CHX Response Letter 3, *supra* note 7, at 3; NA Casin Holdings Letter, *supra* note 6, at 7; Gouroudeva Letter, *supra* note 6; and Prufeta Letter, *supra* note 6.

[100] *See* CHX Response Letter 2, *supra* note 7 at 5; and CHX Response Letter 3, *supra* note 7, at 6.

[101] *See* Ferris Letter 1, *supra* note 6, at 3; Brennan Letter, *supra* note 6, at 2; and Bass Letter, *supra* note 6, at 4–5. Another commenter expresses concern that CFIUS disregarded the concerns of Congress when it closed its review of the Transaction. *See* Hill Letter 2, *supra* note 6.

[102] *See* CHX Response Letter 3, *supra* note 7, at 6.

[103] *See id.*

[104] *See id.*

[105] *See* Pittenger Letter 1, *supra* note 6, at 1–2; Pittenger Letter 2, *supra* note 6, at 1; Bass Letter at 4, *supra* note 6; Mayer Letter, *supra* note 6; and Hill Letter 2, *supra* note 6.

[106] *See* Pittenger Letter 1, *supra* note 6, at 1–2; Bass Letter, *supra* note 6, at 4 (asserting that Chongqing Casin could be 40% owned and controlled by Chinese government entities and Chinese government officials); Mayer Letter, *supra* note 6; and Hill Letter 2, *supra* note 6 (asserting that the Chinese government may be a minority stockholder in one of the upstream owners and that the Chinese government should not be given protections afforded to SROs).

Chongqing Casin, stating that Chongqing Casin is involved in a number of Chinese market sectors that require close ties to the state, such as environmental protection.[107] The commenters assert that Chinese markets are non-transparent and ''heavily dominated'' by the Chinese State Council and that companies in China often receive significant illegal subsidies from the government and are used as conduits for the Chinese Communist Party to ''disrupt and distort foreign markets, businesses, and governments.'' [108] Some commenters also state that Chongqing Casin's financial assets were originally state-controlled, and that its chairman sits on an industry council overseen directly by the mayor of the Chongqing Municipality.[109] These commenters state that, in particular, Chinese ownership or involvement presents risks as Chinese government-sponsored cyber-attacks have been conducted to devalue foreign businesses and steal intellectual property and proprietary data; the commenters assert that this has cost American companies billions of dollars annually.[110] Commenters also state that the Transaction may present financial security risks to investors and the U.S. marketplace.[111] Some commenters believe that the proposal will materially harm the public trust in the independent and objective operation of U.S. capital markets.[112] Similarly, another commenter believes that the proposal is a threat to Americans' faith in the U.S.'s national financial market infrastructure.[113] One commenter also raises concerns that a bad actor with access to an exchange's data could use information available through brokerage records and the Consolidated Audit Trail to engage in spear phishing, blackmail attempts, and other similar attacks.[114] In response, the Exchange states that CFIUS investigated the Transaction and ''determined that there were no unresolved national security concerns with respect to the [p]roposed Transaction.'' [115] Furthermore, some commenters believe that the Transaction would benefit the U.S. capital markets and have positive economic effects.[116] The Exchange also states that the Transaction will enable it to accelerate implementation of its strategic plan, which includes implementing a primary listing program focused on capital formation for emerging growth companies.[117]

Another commenter expresses concern that the proposed upstream ownership leaves CHX and U.S. markets open to ''undetectable manipulation'' by Chongqing Casin and the Chinese government.[118] In response, the Exchange affirms that no prospective investor controls, is controlled by, or is under common control with, a governmental entity or any political subdivision thereof, including the Chinese government.[119]

In addition, some commenters express concern that the Saliba Put Agreement and the Raptor Put Agreement could create voting collusion between Raptor and Saliba, resulting in a combined 24% voting interest that exceeds the 20% voting limitation.[120] The Exchange responds that under the terms of the put agreements, NA Casin Holdings could not compel Saliba or Raptor to exercise its respective put option and that, in the event that either put agreement is exercised, CHX rules would require the resulting ownership structure to comport with the ownership and voting limitations.[121] Some of the commenters assert that Raptor is Saliba's nominee or business partner.[122] NA Casin Holdings and Saliba respond that Raptor and Saliba have never had any relationship, are located in different cities, and are owned by different families.[123] In addition, one commenter asserts that these put agreements are specifically designed to skirt the Commission's exchange ownership restrictions, which would give Chongqing Casin virtual control over the Exchange.[124] In response, the Exchange explains that the put agreements only grant Saliba and Raptor the right to exercise their respective put options and do not grant NA Casin Holdings the right to compel the exercise of those rights.[125] The

[107] *See* Pittenger Letter 1, *supra* note 6, at 1. *See also* Pittenger Letter 2, *supra* note 6, at 1 (stating that the Chinese government dominates all sectors of society and consistently fails to abide by international agreements).

[108] *See* Pittenger Letter 1, *supra* note 6, at 1. In addition, some commenters express concern that the Exchange may list securities of Chinese companies following the Transaction, citing recent accounting and disclosure violations by Chinese companies. *See* Mayer Letter, *supra* note 6; and Park Letter, *supra* note 6. *But see* Nobile Letter, *supra* note 6 (stating that listing of legitimate foreign entities on a U.S. platform strictly regulated under Commission rules and regulations will instill confidence in prospective investors who normally shy away from trading and engaging in foreign exchanges due to well-intentioned concerns regarding lack of regulation or the perception thereof). The Commission notes that the Exchange does not currently list such companies, and the proposed rule change under consideration would not modify the Exchange's listing rules. Thus any new listings would be subject to the rules of the Exchange, and any changes to the Exchange's listing rules would be subject to Commission review under to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder.

[109] *See* Pittenger Letter 1, *supra* note 6, at 1.

[110] *See id.*

[111] *See* Pittenger Letters 1 and 2, *supra* note 6, at 1; Manchin Letter, *supra* note 6, at 1; Anonymous Letter, *supra* note 6; and Dandolu Letter, *supra* note 6.

[112] *See* Pittenger Letter 2, *supra* note 6, at 1.

[113] *See* Manchin Letter, *supra* note 6, at 1.

[114] *See* Anonymous Letter, *supra* note 6.

[115] CHX Response Letter 1, *supra* note 7, at 5.

[116] *See* Caban Letter, *supra* note 6 (stating that having an exchange that would help attract additional foreign investment in Chicago is an important way to help create well-paying jobs); NA Casin Holdings Letter, *supra* note 6, at 8 (stating that the Transaction will help establish links between the capital markets of China and the U.S. and explaining how the Transaction will attract Chinese investors to buy stocks listed on CHX and companies in Asia to list their stock on CHX); Seyedin Letter, *supra* note 6, at 1 (stating the beliefs that the Transaction will make CHX an important bridge between capital markets in US and China and that connecting US and Chinese stock markets would allow the US to benefit further from China's growth); Nobile Letter, *supra* note 6 (stating that the Transaction will result in some very clear benefits to the global financial community and that Casin Group may seek less well known, but legitimate foreign entities that would be listed on a U.S. platform strictly regulated under Commission rules and regulations); Gouroudeva Letter, *supra* note 6 (stating the belief that ownership of CHX by a respected Chinese company will greatly increase direct Chinese investment into the U.S. economy.); Prufeta Letter, *supra* note 6 (stating the belief that the Transaction will provide a unique and exceedingly valuable window to major cross-border investment between the world's largest economies); Saliba Letter, *supra* note 6, at 2 (stating that in order for the U.S. financial markets to remain at the forefront globally, the U.S. must continually innovate and attract business from all over the globe, which the Transaction will enable); Zhong Letter, *supra* note 6 (expressing support for the Transaction because, among other reasons, there are positive effects of trade and commerce between top Chinese companies and U.S.-based companies and that trade is the fundamental basis for positive foreign relations); Karcher Letter, *supra* note 6 (expressing support for investment by Chinese companies in the U.S. because the increased ties through trade will benefit both countries); and Gottlieb Letter, *supra* note 6 (stating that the Transaction will provide a needed opportunity and valuable window for cross-border investments and world economies).

[117] *See* CHX Response Letter 1, *supra* note 7, at 2; CHX Response Letter 3, *supra* note 7, at 2–3.

[118] *See* Mayer Letter, *supra* note 6.

[119] *See* CHX Response Letter 1, *supra* note 7, at 2.

[120] *See* Brennan Letter, *supra* note 6, at 2; Mayer Letter, *supra* note 6; Ferris Letter 1, *supra* note 6, at 2; Ferris Letter 2, *supra* note 6, at 3–4; Bass Letter, *supra* note 6, at 2; and Park Letter, *supra* note 6, at 4.

[121] *See* CHX Response Letter 2, *supra* note 7, at 6.

[122] *See* Ferris Letter 1, *supra* note 6, at 2, n. 5; and Brennan Letter, *supra* note 6, at 2.

[123] *See* NA Casin Holdings Letter, *supra* note 6, at 7; and Saliba Letter, *supra* note 6, at 2.

[124] *See* Ciccarelli Letter, *supra* note 6, at 3.

[125] *See* CHX Response Letter 2, *supra* note 7, at 6. In addition, some commenters assert that a conflict of interest exists because one of the upstream owners, Anthony Saliba, serves on the Exchange's and CHX Holdings' boards of directors. *See* Brennan Letter, *supra* note 6, at 2–3; Ferris Letter 1, *supra* note 6, at 2; Ferris Letter 2, *supra* note 6, at 5; Bass Letter, *supra* note 6, at 2; and Park Letter, *supra* note 6, at 4. In response, the Exchange notes that its current rules require a CHX board position to be reserved for certain CHX Holdings stockholders and asserts that there is no unresolved conflict of interest because Mr. Saliba recused

Exchange also notes that any exercise of the put rights would be subject to compliance with the ownership and voting limitations.[126]

Moreover, two commenters express concern that CHX and the Commission may not be aware of or able to control future transfers of ownership or voting in contravention of the ownership and voting limitations.[127] One of these commenters asserts that there are little to no controls in place at the upstream corporate ownership level that would prevent the upstream owners from transferring their voting power in CHX to even more opaque owners or ownership that involves the Chinese government.[128] The other commenter asserts that neither the Exchange nor the Commission would know if capital stock in China is being consolidated, resold, collateralized, or collusively voted in violation of the 20% voting limitation.[129] The commenter expresses concern that collusion or changes in ownership that are unknown to the Exchange or the Commission could hinder the Exchange's and the Commission's obligations to prevent conflicts of interest and improper influence under Section 6(b)(5) of the Exchange Act.[130] In addition, the commenter asserts that the upstream owners are not being required to amend their governing documents to restrict collusive voting or resale of the Exchange.[131]

In response, the Exchange states that to the contrary, the governing documents of NA Casin Holdings and CHX Holdings do indeed restrict the voting and sale of the Exchange.[132] In addition, as noted above, the Exchange affirms its representation that no prospective owner or any of its Related Persons would maintain an equity interest, or exercise voting power, in violation of the ownership and voting limitations.[133] The Exchange also responds that the proposed governance documents for NA Casin Holdings and CHX Holdings provide robust enforcement mechanisms for the ownership and voting limitations, and that the CHX board's composition would be required to meet certain independence requirements.[134] The Exchange also notes that the CHX rules and Exchange Act contain various provisions that would facilitate the ability of U.S. regulators, including the Commission, to monitor, compel, and enforce compliance by each of the upstream owners.[135]

Commenters also express concern about the ability of the Commission to exercise regulatory oversight over the Exchange following the closing of the Transaction.[136] Characterizing the proposed upstream ownership of CHX as ''opaque,'' several commenters state that approval of the proposal would strip the Commission of its ability to carry out its statutorily mandated oversight of exchange ownership.[137] These commenters also state that given ongoing concerns with the severe lack of transparency in China, the commenters have substantial concerns related to the Commission's ability to monitor and regulate the upstream ownership of Chongqing Casin.[138] These commenters note that neither Chongqing Casin nor any of its coordinate foreign entities have provided U.S. regulators with any power to monitor or regulate their activities with respect to CHX.[139] These commenters further state that, in the past, Chinese entities have limited visibility into post-acquisition activities and have attempted to interpose arguments—such as sovereign immunity or limits to the extraterritorial application of U.S. laws—to avoid compliance with U.S. regulatory requirements.[140] The commenters believe that these actions erode investor trust and adversely affect U.S. regulatory interests.[141]

Similarly, another commenter opines that what the commenter cites as the Chinese government's continued rejection of fundamental free-market norms and property rights of private citizens makes the commenter strongly doubt whether an Exchange operating under the direct control of a Chinese entity can be trusted to self-regulate now and in the future.[142] The commenter states that while the harms caused by NA Casin Group's acquisition of the CHX may not become apparent immediately, allowing this acquisition to proceed could have a devastating effect on the health of U.S. financial markets, which the commenter states are ''the envy of the world.'' [143] The commenter further states that the commenter remains unconvinced of the following: (1) That no prospective investor is influenced or controlled by the Chinese government; (2) that Exchange rules could stand against the levels of deceit employed by the Chinese government; and (3) that the Chinese government would not employ influence to affect exchange decisions or votes.[144]

Furthermore, another commenter asserts that, due to jurisdiction limitations and transparency concerns, under the current proposal, the Commission would not be able to exercise proper regulatory oversight.[145] Some commenters also express concern about the ability of U.S. regulators to access the books and records of the Chinese-owned upstream owners.[146] Two commenters state that they believe that the proposed foreign upstream owners will not submit to U.S. jurisdiction.[147] Another commenter states its view that foreign ownership of the Exchange may result in lax enforcement of its rules.[148]

The Exchange responds that it believes that its rules are consistent with the requirements of the Exchange Act, and that its rules and the Exchange Act contain various provisions that would facilitate the ability of U.S. regulators, including the Commission,

himself from all material CHX Holdings and CHX board votes related to the Transaction. *See* CHX Response Letter 3, *supra* note 7, at 5.

[126] *See* CHX Response Letter 2, *supra* note 7, at 6.

[127] *See* Ciccarelli Letter, *supra* note 6, at 1; and Mayer Letter, *supra* note 6.

[128] *See* Ciccarelli Letter, *supra* note 6, at 2.

[129] *See* Mayer Letter, *supra* note 6. The commenter asserts that restricting voting of shares would not remedy ''back-room voting collusion, share re-sale or collateralization to an unknown party or state entity in China.'' *See id.*

[130] *See id.*

[131] *See id.*

[132] *See* CHX Response Letter 1, *supra* note 7, at 3–4; and CHX Response Letter 2, *supra* note 7, at 2–3.

[133] *See* CHX Response Letter 1, *supra* note 7, at 3; and CHX Response Letter 2, *supra* note 7, at 2.

[134] *See* CHX Response Letter 1, *supra* note 7, at 3. *See also* CHX Response Letter 2, *supra* note 7, at 3.

[135] *See* CHX Response Letter 2, *supra* note 7, at 2–4 (specifically noting: (1) The ownership and voting limitations; (2) provisions in which the upstream owners consent to U.S. regulatory jurisdiction and agree to maintain an agent in the U.S. for service of process; and (3) provisions requiring the upstream owners to maintain their books and records related to CHX in the U.S. and to refrain from interfering with, and to give due consideration to, the SRO function of CHX). *See also* CHX Response Letter 3, *supra* note 7, at 2.

[136] *See* Pittenger Letters 1 and 2, *supra* note 6, at 2; Ciccarelli Letter, *supra* note 6, at 1–2; Bass Letter, *supra* note 6, at 1; and Ferris Letter 1, *supra* note 6, at 4.

[137] *See* Pittenger Letter 2, *supra* note 6, at 1.

[138] *See id.*

[139] *See id.* at 2.

[140] *See id.*

[141] *See id.*

[142] *See* Manchin Letter, *supra* note 6, at 1.

[143] *See id.* at 1–2.

[144] *See id.* at 2.

[145] *See* Ciccarelli Letter, *supra* note 6, at 1–2.

[146] *See* Bass Letter, *supra* note 6, at 5; and Ferris Letter 1, *supra* note 6, at 4. *See also* Pittenger Letter 1, *supra* note 6, at 2 (asserting that the Public Company Accounting Oversight Board must be able to ''penetrate Chinese opacity'' before a Chinese firm is allowed to purchase an American stock exchange).

[147] *See* Ciccarelli Letter, *supra* note 6, at 3–4; and Mayer Letter, *supra* note 6.

[148] *See* Hill Letter 2, *supra* note 6. This commenter also alleges that the Exchange has a record of non-compliance with regulations and failure to fully enforce its rules.

to monitor, compel, and enforce compliance by each of the upstream owners. In particular, upstream owners would be required to adhere to the ownership and voting limitations, submit to U.S. regulatory jurisdiction and maintain agents in the U.S. for the service of process, maintain open books and records related to their ownership of CHX and keep such books and records in the U.S., and refrain from interfering with, and give due consideration to, the SRO function of the Exchange.[149] The Exchange also asserts that, pursuant to the Exchange Act, the Exchange is subject to ''direct and rigorous'' oversight by the Commission, which, the Exchange describes as including among other things, frequent examinations of various aspects of its operations by Commission staff, including security and trading protocols, as well as the requirement for Commission approval of certain regulatory, operational, and strategic initiatives prior to implementation by the Exchange.[150]

In addition, NA Casin Holdings asserts that extensive regulatory and governance safeguards would empower the Commission and the Exchange to prevent any influence over the Exchange and its operations that is improper or a violation of U.S. securities laws and regulations.[151] Other commenters express confidence that the regulatory controls currently in place are adequate to monitor the proposed investors.[152]

4. Commission Findings

The Commission believes that, in light of the proposed restrictions on the ownership and voting of stockholders, the above-discussed corporate governance provisions relating to compliance with U.S. law, consent to jurisdiction, due regard to the regulatory obligations and functions of the Exchange, and books and records, and the statements from the upstream owners committing to submit to jurisdiction and designating an agent for service of process, the proposed rule change is consistent with the requirements of Section 6(b) of the Exchange Act. The Commission believes that the proposed ownership and voting limitations are reasonably designed to prevent any stockholder from exercising undue control over the operation of NA Casin Holdings, and in turn, over the operation of the Exchange. The Commission also notes that these ownership and voting limitations are consistent with those approved by the Commission for other SROs [153] (including for other SROs with foreign ownership),[154] and believes that they are reasonably designed to assure that the Exchange and the Commission are able to carry out their regulatory obligations under the Exchange Act and in administering and complying with the requirements of the Exchange Act. Moreover, the Commission believes that the proposed ownership and voting limits are reasonably designed to eliminate the potential that the control of the Exchange by one or few stockholders would improperly interfere with or impair the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Exchange Act.

In addition to being designed to eliminate the potential of any stockholder from exercising undue control over the Exchange, the Commission also notes that other proposed ownership and voting limitations applicable to members of the Exchange are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange.[155] As the Commission has noted in the past, a member's interest in an exchange could become so large as to cast doubts on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.[156] A member that is a controlling stockholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. As such, these restrictions

[149] *See* CHX Response Letter 1, *supra* note 7, at 4; and CHX Response Letter 2, *supra* note 7, at 3–4.

[150] *See* CHX Response Letter 2, *supra* note 7, at 3–4.

[151] *See* NA Casin Holdings Letter, *supra* note 6, at 1–2. Specifically, NA Casin Holdings observes that 50% of the board of the Exchange would be required to consist of ''Non-Industry Directors'' (which NA Casin Holdings notes is defined in the CHX Bylaws), who cannot be employed by any affiliate of CHX.

[152] *See* Prufeta Letter, *supra* note 6 (stating that ''the continual scrutiny of the US financial system is both essential and firmly in place'' and that the commenter believes that ''all the controls necessary to monitor the investment group exist now and will be sufficient''). *See also* Zhong Letter, *supra* note 6 (expressing confidence that the current controls of the U.S. regulatory system serve as an ''effective check and balance'' on both foreign and domestic investors); Karcher Letter, *supra* note 6 (stating that commenter ''trust[s] [the Commission's] process much more than relying on the ad hominum attacks [the commenter] read[s] within the comments section'').

[153] *See, e.g.,* Securities Exchange Act Release Nos. 79585 (December 16, 2016), 81 FR 93988 (December 22, 2016) (SR–BatsBZX–2016–68) (approving similar restrictions in connection with the merger of Bats Global Markets, Inc. and CBOE Holdings, Inc.) (''BATS–CBOE Approval Order''); 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR–ISE–2016–11, SR–ISE Gemini–2016–05, SR–ISE Mercury–2016–10) (approving similar restrictions proposed in connection with Nasdaq, Inc. becoming the indirect parent of International Securities Exchange, ISE Gemini, LLC, and ISE Mercury, LLC); 74270 (February 13, 2015), 80 FR 9286 (February 20, 2015) (SR–NSX–2014–017) (approving similar restrictions in connection with National Stock Exchange, Inc. becoming a wholly-owned subsidiary of National Stock Exchange Holdings, Inc.) (''NSX Approval Order''); 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGA–2013–34; SR–EDGX–2013–43) (approving similar restrictions in connection with the merger of BATS Global Markets, Inc. and Direct Edge Holdings LLC); 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059, SR–BYX–2013–039) (approving similar restrictions in connection with the merger of BATS Global Markets, Inc. and Direct Edge Holdings LLC); 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE–2013–42, SR–NYSEMKT–2013–50 and SR–NYSEArca–2013–62) (approving similar restrictions in connection with NYSE Euronext Holdings, LLC becoming a wholly-owned subsidiary of Intercontinental Exchange Group, Inc.); 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (approving similar restrictions in connection with the registration Bats BYX Exchange, Inc. as a national securities exchange); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (approving similar restrictions in connection with the registrations of EDGX Exchange, Inc. and EDGA Exchange, Inc. as national securities exchanges) (''EDGX and EDGA Registrations''); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (approving similar restrictions in connection with the registration of BATS Exchange, Inc. as a national securities exchange); 56955 (December 13, 2007), 72 FR 71979, 71982–84 (December 19, 2007) (SR–ISE–2007–101) (approving similar restrictions in connection with International Securities Exchange Holdings, Inc. becoming a wholly-owned indirect subsidiary of Eurex Frankfurt AG) (''ISE Approval Order''); 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (approving similar restrictions in connection with the combination of NYSE Group, Inc. and Euronext N.V.) (''NYSE Euronext Approval Order''); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (approving similar restrictions in connection with the merger of New York Stock Exchange, Inc. and Archipelago); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (File No. SR–NSX–2006–03) (approving similar restrictions in connection with the demutualization of the National Stock Exchange); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving similar restrictions in connection with the registration the Nasdaq Stock Market LLC as a national securities exchange); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR–CHX–2004–26) (approving similar restrictions in connection with the demutualization of CHX); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73) (approving similar restrictions in connection with the demutualization of the Philadelphia Stock Exchange, Inc.).

[154] *See, e.g.,* NYSE Euronext Approval Order, *supra* note 153; EDGX and EDGA Registrations, *supra* note 153; and ISE Approval Order, *supra* note 153.

[155] *See supra* note 57 and accompanying text.

[156] *See, e.g.,* BATS–CBOE Order, *supra* note 153, at 93990.

on Exchange members' ownership and voting of NA Casin Holdings stock are expected to minimize the potential that a person or entity can improperly interfere with or restrict the ability of CHX to effectively carry out its regulatory oversight responsibilities under the Exchange Act.

The Commission also believes that the proposed rule change, as modified by Amendment No. 1, is reasonably designed to: (1) Safeguard against violations of the ownership and voting limitations and (2) facilitate the ability of the Exchange to comply with its responsibilities under the Exchange Act. In particular, the Commission notes the requirements that: (1) Certain stockholders of CHX Holdings and NA Casin Holdings must notify the corporation of changes to the stockholder's voting power or ownership; [157] (2) the chief compliance officer of CHX Holdings monitor for compliance with the limits on ownership and voting applicable to the upstream beneficial owners; [158] and (3) CHX Holdings hire an independent and PCAOB-registered auditor to regularly monitor CHX Holdings' oversight of those limits.[159] The Commission believes this will assist CHX Holdings in exercising its oversight obligations of the ownership and voting limits after the closing of the Transaction.

With regards to commenters' concerns that the upstream owners in fact may be Related Persons,[160] or that the upstream owners may vote or act collusively,[161] or may be under the control of a foreign government,[162] CHX has responded to these concerns by providing certifications from each of the upstream owners, each of which: Identifies its Related Persons; states that it does not directly, or indirectly through one or more intermediaries, control, and is not, directly or indirectly through one or more intermediaries, controlled or owned by, or under common control or ownership with, a governmental entity or political subdivision thereof; and attests that no agreement, arrangement, or understanding exists between the stockholder and any other person for the purpose of acquiring, voting, holding or disposing of shares of stock of NA Casin Holdings.[163] In response to these concerns, as well as commenters' concerns regarding the ability of the Exchange to exercise its self-regulatory obligations and monitor for compliance with its ownership and voting limitations after the closing of the Transaction,[164] the Commission notes that: (1) By September 1, 2018, and every year thereafter, each stockholder of NA Casin Holdings as well as CHX Holdings will be required to submit directly to the Commission and the corporation an attestation as to (a) its equity ownership level in the corporation and the identity of its Related Persons and (b) the existence of any agreement, arrangement or understanding (whether or not in writing) to act together exists between the stockholder, on the one hand, and any other person, on the other hand, for the purpose of acquiring, voting, holding or disposing of shares of stock of the corporation; [165] (2) the chief compliance officer of CHX Holdings will monitor for compliance with the corporation's voting and ownership limitations and ensure that each of the upstream owners provides to the Commission and CHX on a yearly basis relevant attestations; [166] (3) within one year of the closing of the Transaction and every two years thereafter, an independent auditor will audit CHX Holdings' oversight of compliance with such voting and ownership limitations; [167] and (4) each of the upstream owners has irrevocably submitted to the jurisdiction of U.S. federal courts, the Commission and CHX, designated and authorized an agent in the United States for service of process, and committed to promptly inform the Commission in writing of any change of its designated and authorized agent.[168] The Commission believes that these requirements are reasonably designed to assist the Exchange in monitoring for and enforcing compliance with the voting and ownership limitations.

The Commission also notes that although neither NA Casin Holdings nor CHX Holdings would directly perform any regulatory function, their activities with respect to the operation of the Exchange must be consistent with, and must not interfere with, the self-regulatory obligations of the Exchange and the Commission's oversight of the Exchange. The Commission believes that the above-discussed corporate governance provisions of the NA Casin Holdings Certificate, the NA Casin Holdings Bylaws, and the CHX Holdings Bylaws relating to compliance with U.S. law, consent to jurisdiction, due regard to the regulatory obligations and functions of the Exchange, and books and records are reasonably designed to allow: (1) CHX to independently perform its self-regulatory function; (2) CHX to operate in a manner that complies with federal securities laws, including Sections 6(b) and 19(g) of the Exchange Act; [169] and (3) the Commission to fulfill its regulatory and oversight obligations under the Exchange Act with respect to the Exchange.[170] The Commission believes that these provisions should assist CHX in fulfilling its self-regulatory obligations in administering and complying with the requirements of the Exchange Act.

In response to commenters' concerns regarding the ability of CHX and the Commission to exercise jurisdiction over the upstream owners,[171] the Commission notes that each upstream owner has irrevocably submitted to the jurisdiction of the U.S. federal courts, the Commission, and CHX for the purposes of any action relating to the certification to the Commission and CHX regarding its ownership levels and Related Persons, among other things, or the activities of CHX, and designated an agent for the service of process of such claims.[172] The Commission believes that this will enhance the ability of the Commission to fulfill its regulatory and oversight obligations and of CHX to fulfill its self-regulatory obligations under the Exchange Act.

As discussed above, various commenters express concern about the identity and motives of the upstream owners and, in light of these issues, the Commission's ability to effectively regulate the Exchange.[173] Based on the information in the record,[174] the

[157] *See supra* note 38 and accompanying text.

[158] *See supra* note 72 and accompanying text.

[159] *See supra* note 73 and accompanying text.

[160] *See supra* notes 80–84 and accompanying text.

[161] *See supra* notes 120 and 129 and accompanying text.

[162] *See supra* note 105 and accompanying text.

[163] *See supra* note 69 and accompanying text.

[164] *See supra* notes 87, 127–131, and 138–139 and accompanying text.

[165] *See supra* note 69 and accompanying text. *See also infra* note 185 and accompanying text.

[166] *See supra* note 72 and accompanying text.

[167] *See supra* note 79 and accompanying text.

[168] *See infra* note 71 and accompanying text.

[169] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g), respectively.

[170] The Commission notes that these requirements are consistent with other such provisions previously approved by the Commission. *See supra* note 153.

[171] *See supra* notes 145 and 147 and accompanying text.

[172] *See* Amendment No. 1, *supra* note 10, Exhibit 2.

[173] *See supra* note 92 and accompanying text.

[174] CHX makes representations regarding the identities of the upstream owners, the relationships between the upstream owners, and their relationship to the Chinese government. Specifically, the Exchange states that the only Related Persons among the Indirect Upstream Owners are Castle YAC and NA Casin Group; there are no other Related Persons among the Indirect Upstream Owners; none of the Indirect Upstream Owners directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a governmental entity

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Commission believes that the proposed requirements applicable to the Exchange, CHX Holdings, and NA Casin Holdings are reasonably designed to allow the Commission to oversee the Exchange and for CHX to independently discharge its SRO responsibilities.[175] In particular, the Commission notes that, under the NA Casin Holdings Certificate, for as long as a stockholder maintains a direct or indirect equity interest in the Exchange, (1) the books, records, officers, directors (or equivalent) and employees of the stockholder will be deemed to be the books, records, officers, directors, and employees of the Exchange for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of the Exchange; (2) the stockholder's books and records related to the activities of the Exchange must be made available for inspection and copying by the Commission and the Exchange at all times; and (3) the stockholder's books and records related to the activities of the Exchange must be maintained within the United States. The Commission also notes that the upstream owners have irrevocably submitted to the jurisdiction of U.S. federal courts, the Commission, and CHX.[176]

Commenters also express concern regarding the potential for malfeasance whether by individuals or on behalf of government actor.[177] We note that the Exchange stated that CFIUS investigated the Transaction and the upstream owners, and concluded that there are no unresolved national security concerns. Furthermore, in response to commenters' concerns regarding potential financial security risks of the proposed ownership structure,[178] the Commission notes that CHX will limit access to CAT Data to only CHX regulatory personnel.[179] In addition, the requirement that CHX engage an independent auditor to monitor for CHX's oversight of compliance with the policies and procedures relating to access to CAT Data will assist CHX in meeting its self-regulatory obligations.[180]

In addition, if NA Casin Holdings, CHX Holdings, or CHX provides information of any kind to a U.S. governmental entity or U.S. authority pursuant to any agreement, then the company will contemporaneously provide such information to the Commission as well.[181] The Commission believes that receiving such information will further assist the Commission in fulfilling its mission to oversee and regulate the Exchange by helping to ensure that the Commission is aware of activities—by CHX, CHX Holdings, NA Casin Holdings, and perhaps the upstream beneficial owners—that may be relevant under the Exchange Act.

The Commission believes that CHX's rule changes requiring it to confirm that any RSA it may enter into will comply with U.S. federal securities laws and the rules and regulations thereunder,[182] that its chief regulatory officer will monitor provisions of the RSA on an on-going basis,[183] and that it will engage an independent and PCAOB-registered auditor that would perform oversight of the RSA within one year after the closing of the Transaction and every two years thereafter,[184] respond to concerns and will assist the Exchange in complying with federal securities laws and monitoring for compliance with federal securities laws on an on-going basis.

Furthermore, the Commission notes that the attestations submitted by the stockholders of NA Casin Holdings, and the annual attestations that will be submitted by the shareholders of NA Casin Holdings and CHX Holdings starting September 1, 2018, will be made directly to the Commission, and therefore potential liability for misrepresentations would attach.[185] Additionally, to the extent that CHX (a) violated any provision of the Exchange Act, including Section 19(b), any rule or regulation under the Exchange Act, or any Exchange rule, (b) is unable to comply with any provision of the Exchange Act, any rule or regulation under the Exchange Act, or any Exchange rule, or (c) without reasonable justification or excuse failed to enforce compliance with any such provision by any Participant or person associated with a Participant, the Commission may take action to either revoke or suspend for up to 12 months its registration as a national securities exchange or limit CHX's activities, functions, and operations.[186] Further, to the extent that any officer or director of the Exchange either willfully violated any provision of the Exchange Act, including Section 19(b), any rule or regulation under the Exchange Act, or any Exchange rule, or without reasonable justification or excuse failed to enforce compliance with any such provision by any Participant or person associated with a Participant, the Commission may take action to remove such person from office.[187]

Finally, the Commission notes that: (1) Under Section 20(a) of the Exchange Act, any person with a controlling interest in CHX shall be jointly and severally liable with and to the same extent that the CHX is liable under any provision of the Exchange Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action; (2) Section 20(e) of the Exchange Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder; and (3) Section 21C of the Exchange Act authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Exchange Act through an act or omission that the person knew or should have known would contribute to the violation.

For these reasons, the Commission believes that the proposed rule change—including restrictions on the ownership and voting of stockholders and the above-discussed corporate governance provisions relating to compliance with U.S. law, consent to jurisdiction, due regard to the regulatory obligations and functions of the Exchange, and books and records, and statements from the upstream owners committing to submit to jurisdiction—is consistent with the Exchange Act, including Section 6(b)(1).

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or any political subdivision thereof. *See* Notice, *supra* note 3, 81 FR at 89545.

[175] As CHX states, the Commission directly oversees national securities exchanges (such as CHX), which are subject to inspections that examine various aspects of their exchange operations and which must submit for prior Commission approval certain regulatory, operational, and strategic initiatives. *See supra* note 150 and accompanying text. In light of the description of the owners provided by CHX, the Commission agrees with NA Casin that the Commission's jurisdiction coupled with the proposed governance safeguards will empower the Commission and the Exchange to prevent any influence over CHX and its operations that is improper or a violation of U.S. securities laws and regulations. *See supra* note 151 and accompanying text.

[176] *See supra* note 71 and accompanying text.

[177] *See supra* notes 108–112, and 114 and accompanying text.

[178] These concerns are discussed above. *See supra* notes 111–114.

[179] *See supra* note 78 and accompanying text.

[180] This requirement is discussed above. *See supra* note 79 and accompanying text.

[181] *See supra* notes 40–42 and accompanying text.

[182] *See supra* note 75 and accompanying text.

[183] *See supra* note 76 and accompanying text.

[184] *See supra* note 79 and accompanying text.

[185] *See, e.g.,* 18 U.S.C. 1001.

[186] *See* 15 U.S.C. 78s(h)(1).

[187] *See* 15 U.S.C. 78s(h)(4).

*B. Board Composition and Procedures; Committees; Special Meetings of the Stockholders*

The Exchange proposes to amend the composition of the CHX and CHX Holdings boards of directors, and to make other changes to the governance of these entities. For example, CHX proposes that the CHX board of directors consist of at least 10 and not more than 25 directors.[188] The CHX board of directors would be comprised as follows: (1) The Chief Executive Officer of CHX; (2) at least 50% Non-Industry Directors [189] (at least one of whom must be an Independent Director [190]); (3) such number of Participant Directors [191] as necessary to comprise at least 20% of the board; and (4) such number of CHX Holdings Directors [192] as necessary to comprise at least 20% of the board.[193] The directors (other than the Chief Executive Officer) shall serve one-year terms, and any director may be removed from office by a majority vote of the stockholders at any time with or without cause, provided that any Participant Director or CHX Holdings Director may only be removed for cause.[194]

In addition, CHX proposes to amend its bylaws to require that the board's Regulatory Oversight Committee be composed entirely of Non-Industry Directors.[195] The proposed CHX Bylaws also require that the Nominating and Governance Committee will have four members and be comprised of at least two Non-Industry Directors, and set forth the process that the Nominating and Governance Committee will follow in submitting nominees for board positions.[196] Among other things, the proposed CHX Bylaws also provide that a majority of the directors would constitute a quorum,[197] action by the board requires a majority of directors,[198] and that vacancies on the board may be filled by a majority of directors then in office, or by a sole remaining director, except that vacancies in the Participant Director or CHX Holding director position must be recommended by the Participant Director Nominating Committee, or the CHX Holdings board, as applicable.[199] In addition, CHX proposes that special meetings of its stockholders may be called at any time by the board of directors or the chief executive officer, or upon written notice to CHX by the stockholders holding one-third of the votes entitled to be cast.[200]

With respect to CHX Holdings, CHX proposes that the number of directors on the board be established by resolution, eliminating the requirement that the board have no less than 10 and no more than 16 directors.[201] CHX also proposes to eliminate the three classes of CHX Holdings directors and their associated three-year staggered terms and to instead provide that each CHX Holdings Director shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.[202] In addition, CHX proposes to amend the CHX Holdings Bylaws to change the required number of directors on the Nominating and Governance Committee from six to one or more directors.[203] CHX also proposes that special meetings of the CHX Holdings stockholders may be called at any time by the board of directors or the Chief Executive Officer, or upon written notice to CHX Holdings by the stockholders holding one-third of the votes entitled to be cast.[204] In addition, CHX proposes that any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote.[205]

With respect to NA Casin Holdings, its proposed certificate of incorporation contains provisions that, according to the Exchange, are designed to ensure that a new NA Casin Holdings board is elected by the upstream owners as soon as practicable after closing of the Transaction, as well as provisions to facilitate the ability of NA Casin Holdings to maintain board members that are experienced with the operation of the Exchange.[206] Specifically, within 30 days after the consummation of the Transaction, NA Casin Holdings must convene a special meeting of its stockholders for the purpose of electing a new board of directors.[207] The NA Casin Holdings board will be divided into three classes from and after that initial special meeting, with the term of each Class I director expiring in 2017, the term of each Class II director expiring in 2018, and the term of each Class III director expiring in 2019.[208] Other than those initial terms, each director will serve for a term ending on the date of the third annual meeting following the meeting at which such director was elected.[209] The number of directors on the NA Casin Holdings board will be determined by the board of directors.[210] The Exchange asserts that the proposed class board structure of NA Casin Holdings would ensure overlap of board member terms, which would provide continuity and stability in the board's composition and, thereby, facilitate the ability of the NA Casin Holdings board to meet its obligations with regard to CHX as set forth in Article IX of the NA Casin Holdings Certificate.[211]

The Commission believes that the proposed changes to the CHX Bylaws related to the structure, composition, and committee composition of CHX's board of directors are consistent with Section 6(b)(3) of the Exchange Act in that they assure the fair representation of CHX members on the CHX board and

[188] *See* proposed CHX Bylaws Article III, Section 3.2.

[189] CHX would define ''Non-Industry Director'' as a member of the board who is (1) an Independent Director (as defined below); or (2) any other individual who would not be an Industry Director (as defined in Article I, Section 1.1(m) of the CHX Bylaws). *See* proposed CHX Bylaws Article I, Section 1.1(n).

[190] CHX would define ''Independent Director'' as a member of the board that the board has determined to have no material relationship with the Exchange or any affiliate of the Exchange or any Participant or any affiliate of any such Participant other than as a member of the board. *See* proposed CHX Bylaws Article I, Section 1.1(l).

[191] CHX would define ''Participant Director'' as a director who is a Participant or a director, officer, managing member or partner of an entity that is or is an affiliate of, a Participant. *See* proposed CHX Bylaws Article I, Section 1.1(g).

[192] CHX would define ''CHX Holdings Director'' as a member of the Board who is a director of CHX Holdings, Inc. *See* proposed CHX Bylaws Article I, Section 1.1(g).

[193] *See* CHX Bylaws Article III, Section 3.2(b).

[194] Under the CHX Bylaws, ''cause'' means only (a) a breach of a director's duty of loyalty to the corporation or its stockholders, (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (d) transactions from which a director derived an improper personal benefit. *See* proposed CHX Bylaws Article III, Section 3.8.

[195] *See* CHX Bylaws Article V, Section 5.7.

[196] *See* proposed CHX Bylaws Article III, Section 3.6. In addition, proposed CHX Bylaws Article V, Section 5.11 provides that the Participant Director Nominating Committee will be composed solely of Participant Directors or representatives of Participant Directors and will be responsible for submitting names of candidates for the position of Participant Director.

[197] *See* proposed CHX Bylaws Article III, Section 3.13.

[198] *See id.*

[199] *See* proposed CHX Bylaws Article III, Section 3.7.

[200] *See* proposed CHX Bylaws Article IV, Section 4.2.

[201] *See* proposed CHX Holdings Bylaws Article II, Section 2.2(a).

[202] *See* proposed CHX Holdings Bylaws Article II, Section 2.2(c).

[203] *See* proposed CHX Holdings Bylaws Article II, Section 2.3.

[204] *See* proposed CHX Holdings Bylaws Article IV, Section 4.2.

[205] *See* proposed CHX Holdings Bylaws Article II, Section 2.16.

[206] *See* Notice, *supra* note 3, 81 FR at 89556.

[207] *See* proposed NA Casin Holdings Certificate Article V, Section (5).

[208] *See* proposed NA Casin Holdings Certificate Article V, Section (6).

[209] *See id.*

[210] *See* proposed NA Casin Holdings Bylaws Article 3, Section 3.2.

[211] *See* Notice, *supra* note 3, 81 FR at 89556.

in the administration of exchange affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. In particular, the Commission finds that the requirement that at least 20% of the board be comprised of Participant Directors is consistent with the fair representation requirements under Section 6(b)(3) In addition, the Commission finds that the proposed provisions of the CHX, CHX Holdings, and NA Casin Holdings governing documents relating to the proposed structure, composition, and governance of their boards of directors,[212] are consistent with Section 6(b)(1) of the Exchange Act in that they are designed to assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Exchange Act. For example, the Commission believes that the requirement that the CHX board of directors be comprised of at least 50% Non-Industry Directors, and that the CHX Regulatory Oversight Committee be comprised entirely of Non-Industry Directors, is consistent with Section 6(b)(1) because it reduces the likelihood of conflicts of interest and therefore, enables the independence of the Exchange in administering and complying with the requirements of the Exchange Act. The Commission emphasizes that following the Transaction, the board of directors of the Exchange—not its parent companies or the upstream owners [213]—will continue to be the governing body of the Exchange and possess all the authority necessary for the management of the business and affairs of the Exchange and the execution of the responsibilities of the Exchange as an SRO.

*C. Future Amendments to the Governing Documents of CHX Holdings and NA Casin Holdings*

The Exchange also has proposed to harmonize provisions under the CHX Holdings Bylaws, the CHX Holdings Certificate, the NA Casin Holdings Certificate, and the NA Casin Holdings Bylaws regarding the effectuation of amendments to those documents. The proposed CHX Holdings Bylaws, proposed CHX Holdings Certificate, NA Casin Holdings Bylaws, and NA Casin Holdings Certificate provide that, for so long as CHX Holdings and NA Casin Holdings control CHX, they must submit any changes to their bylaws or certificates of incorporation to the board of directors of CHX.[214] If the board of directors of CHX determines that the changes must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules thereunder, then the proposed changes would not be effective until filed with or filed with and approved by the Commission, as the case may be.[215]

The Commission believes that these provisions are consistent with the Exchange Act because they enable continued oversight of CHX Holdings and NA Holdings by the Exchange and the Commission, which should help assure that the Exchange remains organized in a manner that will allow it to fulfill its self-regulatory obligations and to comply with the requirements of the Exchange Act.

*D. Waiver of CHX Holdings' Ownership and Voting Limitations*

With respect to the Transaction, pursuant to the CHX Holdings Certificate, CHX has filed for approval of a waiver of certain restrictions on ownership and voting contained in the CHX Holdings Certificate. Specifically, the current certificate prohibits, among other things: (1) Any Person, either alone or together with its Related Persons, from owning, directly or indirectly, of record or beneficially, shares of stock of the CHX Holdings representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter; and (2) any Person, either alone or together with its Related Persons, from directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, voting or causing the voting of shares of the capital stock (whether such shares be common stock or preferred stock) of CHX Holdings or giving any consent or proxy with respect to shares representing more than 20% of the voting power of the then issued and outstanding capital stock of CHX Holdings.[216] A waiver of these ownership and voting limitations is required to effect the Transaction because, after the closing of the Transaction, CHX Holdings would become a wholly-owned subsidiary of NA Casin Holdings. CHX states that the board of directors of CHX Holdings adopted resolutions necessary to waive the ownership and voting limitations, and that Commission approval of the proposed rule change will effectuate a waiver of these requirements under the CHX Holdings Bylaws.[217]

The Commission believes that it is consistent with the Exchange Act to allow NA Casin Holdings to own and vote all of the outstanding common stock of CHX Holdings. In particular, NA Casin Holdings will be subject to the ownership and voting limitations described above, which are consistent with CHX Holdings' current ownership and voting limitations.[218] In addition, and as discussed above, CHX Holdings and NA Casin Holdings have also included in their corporate documents certain provisions designed to maintain the independence of the Exchange's regulatory functions.[219] Accordingly, the Commission believes that the revised rules of the Exchange, including the corporate documents of NA Casin Holdings, CHX Holdings, and the Exchange, are reasonably designed to support the ability of the Exchange to carry out its responsibilities under the Exchange Act and the rules and regulations promulgated thereunder and the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder.

Going forward, the proposed CHX Holdings Certificate provides that, for any Person to acquire ownership or exercise voting rights in excess of the ownership and voting limitations: [220] (1) Such Person must deliver, not less than 45 days prior to such acquisition of ownership or exercise of voting rights, a notice in writing to the board of directors expressing its intention to

[212] *See supra* Section III.B.

[213] One commenter asserts that foreigners will be ultimately in charge of oversight of enforcement of trading rules and regulations on CHX. *See* Hill Letter 2, *supra* note 6. As discussed above, the Commission believes the proposal is designed to mitigate the ability of stockholders from exercising undue influence over CHX through the ownership structure, the governance arrangements, the attestations of the stockholders, and the requirements for CHX Holdings to monitor the ownership structure on an ongoing basis.

[214] *See* proposed CHX Holdings Certificate Article ELEVENTH; proposed CHX Holdings Bylaws Article VIII; proposed NA Casin Holdings Certificate Article X; proposed NA Casin Bylaws, Article 11.1.

[215] *See id.*

[216] *See* CHX Holdings Certificate Article FIFTH, Sections (b)(ii)(A) and (C). The CHX Holdings board of directors may waive these voting and ownership limitations, if, in connection with taking such action, the board of directors adopts a resolution determining that: (1) The waiver will not impair the ability of CHX to carry out its functions and responsibilities as an ''exchange'' under the Exchange Act, and the rules under the Exchange Act; (2) the waiver is otherwise in the best interests of CHX Holdings, its stockholders, and CHX; (3) the waiver will not impair the ability of the Commission to enforce the Exchange Act; and (4) the action will not be effective until approved by the Commission. *See* CHX Holdings Certificate Article FIFTH, Section (b)(iii)(B).

[217] *See* Notice, *supra* note 3, 81 FR at 89551–52.

[218] *See* text accompanying notes 28–33.

[219] *See supra* Section III.A.

[220] The ownership and voting of CHX Holdings stock would continue to be subject to certain limitations discussed above following the Transaction. *See supra* notes 57–66 and accompanying text.

acquire such ownership or exercise such voting rights; (2) the CHX Holdings board must resolve to expressly permit such ownership or exercise of voting rights; [221] and (3) such resolution must be filed with and approved by the Commission under Section 19(b) of the Exchange Act.[222] The proposed NA Casin Holdings Certificate contains substantially identical provisions.[223] The Commission believes that these provisions are reasonably designed to assist the Exchange in fulfilling its self-regulatory obligations, and in administering and complying with the requirements of the Exchange Act, by ensuring that the Commission will review and approve, if appropriate, any future change in ownership or voting power that gives rise to its concerns about a stockholder exercising undue control over the operation of the Exchange.[224] Similarly, the Commission believes that this protection against such future changes in ownership or voting concentration without careful Commission review and approval is reasonably designed to promote just and equitable principles of trade and to protect investors and the public interest under the standards set forth in Section 6(b)(5) of the Exchange Act. The Commission also notes that these requirements for acquiring ownership or exercising voting rights in excess of the ownership and voting limitations are consistent with other such provisions previously approved by the Commission.[225]

## IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Exchange 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–CHX–2016–20 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–CHX–2016–20. 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 this filing will also 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–CHX–2016–20 and should be submitted on or before September 5, 2017.

## V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. As noted above, Amendment No. 1 does not change the structure or purpose of the proposed rule change as it was previously published for notice and comment.[226] Rather, the Exchange modified its proposed rule change to address certain concerns raised by commenters. The Commission believes that an additional notice and comment period for Amendment No. 1 before approval of the proposed rule change would not be in furtherance of the public interest or the protection of investors. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[227] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act [228] that the proposed rule change (SR–CHX–2016–20), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[229]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2017–17179 Filed 8–14–17; 8:45 am]

**BILLING CODE 8011–01–P**

[221] The CHX Holdings Bylaws require that the board must make a determination that: (1) Such acquisition of ownership or exercise of voting rights will not impair any of CHX Holdings' or the Exchange's ability to discharge its responsibilities under the Exchange Act and the rules and regulations thereunder and is otherwise in the best interests of CHX Holdings and its stockholders; (2) such acquisition of ownership or exercise of voting rights will not impair the Commission's ability to enforce the Exchange Act; and (3) neither such Person nor any of its Related Persons is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act. *See* CHX Holdings Certificate Article FOURTH, Sections (b)(iii) and (c)(i)(B).

[222] *See* CHX Holdings Certificate Article FOURTH, Sections (b)(ii)–(iii) and (c)(ii)(A)–(B).

[223] *See* NA Casin Holdings Certificate Article IX, Sections (6)–(7), and (9).

[224] *See supra* Section III.A.

[225] *See, e.g.,* NSX Approval Order, *supra* note 153, 80 FR at 9288–89.

[226] *See supra* note 10.

[227] 15 U.S.C. 78s(b)(2).

[228] 15 U.S.C. 78s(b)(2).

[229] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81361; File No. SR–NASDAQ–2017–080]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees

August 9, 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 August 1, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Chapter XV, Section 2 entitled ''NASDAQ Options Market—Fees and Rebates,'' which governs pricing for Nasdaq Participants using the NASDAQ Options Market (''NOM''), Nasdaq's facility for executing and routing standardized equity and index options.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes two NOM pricing amendments at Chapter XV, Section 2(1), as described below in greater detail.

Customer and Professional Rebate to Add Liquidity

The Exchange proposes to amend an existing method for earning a rebate for adding liquidity for both Customers [3] and Professionals [4] in Penny Pilot [5] and Non-Penny Pilot Options. For Customers and Professionals transacting in Penny Pilot Options, the Exchange currently pays a volume-based tiered Rebate to Add Liquidity, as set forth in Chapter XV, Section 2(1) of NOM Rules. That rebate consists of 8 tiers, ranging from $0.20 per contract to $0.48 per contract, with the volume requirements increasing with each tier. Thus, a NOM Participant would qualify for a rebate of $0.20 per contract in Tier 1 for Customers and Professionals if it added Customer, Professional, Firm,[6] Non-NOM Market Maker [7] and/or Broker-Dealer [8] liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month. In comparison, a Participant would qualify for a rebate of $0.48 in Tier 8 for Customers and Professionals if it added Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or if the Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.20% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS.[9]

Currently, Customers and Professionals transacting in Non-Penny Pilot Options on NOM receive a $0.80 per contract Rebate to Add Liquidity, as set forth in Chapter XV, Section 2(1) of NOM Rules. In addition, footnote ''1'' in Chapter XV, Section 2(1) provides that a Participant that qualifies for a Customer or Professional Penny Pilot Options Rebate to Add Liquidity in Tiers 2, 3, 4, 5 or 6 in a month will receive an additional $0.10 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Options in that month. A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity in Tiers 7 or 8 in a month will receive an additional $0.20 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month.

In addition, note ''e'' in Chapter XV, Section 2(1) provides that a Participant may receive a $0.53 per contract Rebate to Add Liquidity in Penny Pilot Options as Customer or Professional, and a $1.00 per contract Rebate to Add Liquidity in Non-Penny Pilot Options as a Customer or Profession, if that NOM Participant transacts on the NASDAQ Stock Market through one or more of its Nasdaq Market Center MPIDs in the same month, and such transactions in all securities on the NASDAQ Stock Market that month through all of its Nasdaq Market Center MPIDs represent 3.00% or more of Consolidated Volume.[10] Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1 through 8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1) of NOM Rules.[11]

Lastly, note ''f'' in Chapter XV, Section 2(1) provides that a Participant may receive a $0.55 per contract Rebate to Add Liquidity in Penny Pilot Options as Customer or Professional, and a $1.05 per contract Rebate to Add Liquidity in

[3] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)).

[4] The term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[5] The Penny Pilot was established in March 2008. *See* Securities Exchange Act Release No. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot). Since that date, the Penny Pilot has been expanded and is currently extended through December 31, 2016 or the date of permanent approval, if earlier. *See* Securities Exchange Act Release No. 78037 (June 10, 2016), 81 FR 39299 (June 16, 2016) (SR–NASDAQ–2016–052).

[6] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[7] The term ''Non-NOM Market Maker'' or (''O'') is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[8] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[9] MARS refers to the Market Access and Routing Subsidy, which is set forth in Chapter XV, Section 6. The MARS payment currently comprises of four volume-based tiers, and is paid to NOM Participants that route eligible contracts to NOM through a participating NOM Participant's routing system. The MARS payment is paid on all executed eligible contracts that add liquidity. *See* NOM Rules at Chapter XV, Section 6.

[10] Consolidated Volume would be determined as set forth in Nasdaq Rule 7018(a).

[11] In calculating total volume, the Exchange would add the NOM Participant's total volume transacted on the NASDAQ Stock Market in a given month across its Nasdaq Market Center MPIDs, and will divide this number by the total industry Consolidated Volume.

Non-Penny Pilot Options as Customer or Professional, if that NOM Participant (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month (''NOM Volume Threshold''), (b) executes greater than 0.04% of Consolidated Volume (''CV'') via Market-on-Close/Limit-on-Close (''MOC/LOC'') [12] volume within the NASDAQ Stock Market Closing Cross within a month, and (c) adds greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month. Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1 through 8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1).

The Exchange now proposes to amend the current qualifications for earning the Rebate to Add Liquidity in note ''f'' by lowering the NOM Volume Threshold. Specifically, the Exchange is proposing to continue to pay a $0.55 per contract Rebate to Add Liquidity in Penny Pilot Options as Customer or Professional, and a $1.05 per contract Rebate to Add Liquidity in Non-Penny Pilot Options as Customer or Professional, if that NOM Participant (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 1.20% of total industry customer equity and ETF option ADV contracts per day in a month, (b) executes greater than 0.04% of CV via MOC/LOC volume within the NASDAQ Stock Market Closing Cross within a month, and (c) adds greater than 1.5 million shares per day of non-displayed volume within the NASDAQ Stock Market within a month.[13]

The Exchange's proposal to lower the NOM Volume Threshold from above 1.45% of total industry customer equity and ETF option ADV contracts per day in a month to above 1.20% should provide Participants the ability to qualify for this incentive by executing less contracts which represent industry volume in a given month. The Exchange believes that this amendment should incentivize Participants to transact more volume to qualify for the rebate in footnote ''f'' since one of the qualifiers requires a lower percentage of total industry customer equity and ETF option ADV contracts per day in a month as compared to the current percentage.

NOM Market Maker Non-Penny Pilot Options Fee for Adding Liquidity

The Exchange proposes to offer Participants that send NOM Market Maker [14] order flow an opportunity to lower their Fee for Adding Liquidity in Non-Penny Pilot Options, as set forth in Chapter XV, Section 2(1). In particular, the Exchange proposes to offer Participants the opportunity to reduce the NOM Market Maker Non-Penny Pilot Options Fee for Adding Liquidity from $0.35 to $0.00 per contract, provided the Participant adds NOM Market Maker liquidity in Non-Penny Pilot Options of 7,500 or more ADV contracts per day in a month.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[16] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Customer and Professional Rebate to Add Liquidity

The Exchange's proposal to lower the NOM Volume Threshold is reasonable because the rebates in footnote ''f'' should continue to attract Customer and Professional order flow to NOM. The additional Customer and Professional order flow to NOM benefits other market participants by providing additional liquidity with which to interact. Customer liquidity offers unique benefits to the market by providing more trading opportunities, which attracts market makers. An increase in the activity of market makers in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Furthermore, the Exchange believes that encouraging Participants to add Professional liquidity creates competition among options exchanges because the amended note ''f'' rebates may cause market participants to select NOM as a venue to send Professional order flow. Amending the existing NOM Volume Threshold affords more Participants the ability to qualify for the note ''f'' rebates because it requires less volume as a result of the proposed lower percentage of industry volume. With this proposal, Participants that consistently send order flow to the Exchange may continue to qualify for the rebates in note ''f'' and other Participants may send additional order flow to qualify for the note ''f'' rebates with the lower requirement.

The Exchange's proposal to lower the NOM Volume Threshold is equitable and not unfairly discriminatory because all Participants are eligible to earn rebates. These rebates would be paid uniformly to all qualifying Participants.

NOM Market Maker Non-Penny Pilot Options Fee for Adding Liquidity

The proposed change to offer Participants that send NOM Market Maker order flow the opportunity to reduce the NOM Market Maker Non-Penny Pilot Options Fee for Adding Liquidity from $0.35 to $0.00 per contract, provided the Participant adds NOM Market Maker liquidity in Non-Penny Pilot Options of 7,500 or more ADV contracts per day in a month is reasonable because the Exchange seeks to encourage Participants to add NOM Market Maker liquidity in Non-Penny Options to obtain the discount. The Exchange believes that its proposal will incentivize Participants to select NOM as a venue and in turn benefit other market participants with the opportunity to interact with such liquidity.

Furthermore, the Exchange believes that its proposal to reduce the NOM Market Maker fee as described above is equitable and not unfairly discriminatory because NOM Market Makers, unlike other market participants, add value through continuous quoting [17] and the

[12] MOC/LOC, as set forth in NASDAQ Rule 4754, represents the volume in the NASDAQ Stock Market Closing Cross that allows market participants to contribute order flow that will result in executions at the official closing price for the day in the NASDAQ listed security. A ''MOC Order'' is an order type entered without a price that may be executed only during the NASDAQ Closing Cross, which refers to the equity closing cross. A ''LOC Order'' is an order type entered with a price that may be executed only in the NASDAQ Closing Cross.

[13] Participants that meet the new qualifications for the note ''f'' incentive would continue to be ineligible for any other rebates in Tiers 1 through 8 or other rebate incentives on NOM for Customer and Professional order flow in Chapter XV, Section 2(1).

[14] The term ''NOM Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

[17] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market

Continued

commitment of capital. In addition, encouraging NOM Market Makers to add greater liquidity benefits all Participants in the quality of order interaction. The Exchange believes it is equitable and not unfairly discriminatory to offer only NOM Market Makers the opportunity to earn the discounted fee described above because of the obligations borne by these market participants, as noted herein.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. The Exchange believes that the proposed pricing changes are competitive and does not impose a burden on inter-market competition. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

As it relates to the proposed fee change to lower the NOM Volume Threshold, the Exchange does not believe that its proposal imposes an undue burden on intra-market competition because all Participants are eligible to earn rebates and these rebates would be uniformly paid to all qualifying Participants. The Exchange also does not believe that its proposal to offer Participants an opportunity to reduce the NOM Market Maker Non-Penny Pilot Options Fee for Adding Liquidity from $0.35 to $0.00 if they meet the volume-based standard described above imposes an undue burden on intra-market competition because NOM Market Makers, unlike other market participants, add value through continuous quoting [18] and the commitment of capital.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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–NASDAQ–2017–080 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–080. 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–NASDAQ–2017–080, and should be submitted on or before September 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[18] *See* note 17 above.

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81360; File No. SR–NASDAQ–2017–079]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Market Access and Routing Subsidy Program

August 9, 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 August 1, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Chapter XV, Section 2 entitled ''NASDAQ Options Market—Fees and Rebates,'' which governs pricing for Nasdaq Participants using the NASDAQ Options Market (''NOM''), Nasdaq's facility for executing and routing standardized equity and index options. The Exchange proposes to amend its subsidy program, the Market Access and Routing Subsidy or ''MARS,'' for NOM Participants that provide certain order routing functionalities [3] to other NOM Participants and/or use such functionalities themselves.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its MARS subsidy program, which pays a subsidy to NOM Participants that provide certain order routing functionalities to other NOM Participants and/or use such functionalities themselves. Generally, under MARS, the Exchange pays participating NOM Participants to subsidize their costs of providing routing services to route orders to NOM. At this time, the Exchange proposes to amend Chapter XV, Section 2(6) to expand the MARS Payment tiers as described further below.

Today, NOM Participants that have System Eligibility [4] and have routed the requisite number of Eligible Contracts daily in a month (''Average Daily Volume''), which were executed on NOM, are entitled to a MARS Payment. For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm,[5] Non-NOM Market Maker,[6] Broker-Dealer,[7] or Joint Back Office or ''JBO'' [8] equity option orders that add liquidity and are electronically delivered and executed.[9]

The Exchange currently pays the following MARS Payments according to Average Daily Volume (''ADV'') [10] submitted on NOM:

| Tiers | Average daily volume (''ADV'') | MARS Payment (penny) | MARS Payment (non-penny) |
|---|---|---|---|
| 1 | 2,500 | $0.07 | $0.15 |
| 2 | 5,000 | 0.09 | 0.20 |
| 3 | 10,000 | 0.11 | 0.30 |
| 4 | 20,000 | 0.15 | 0.50 |

Also, NOM Participants that qualify for Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 in Chapter XV, Section 2(1) will receive $0.09 per contract in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month. The specified MARS Payment will be paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. No payments will be made with respect to orders that are routed to NOM, but not executed.[11]

The Exchange proposes to add a new Tier 5 with an ADV of 45,000 contracts and pay a MARS Payment of (i) $0.17 per contract for Penny Pilot Options transactions that qualify for the MARS Payment tier program and (ii) $0.60 per contract for Non-Penny Pilot Options transactions that qualify for the MARS Payment tier program. The Exchange would continue to pay an additional $0.09 per contract in addition to any MARS Payment tier on MARS Eligible Contracts in a given month, provided

[3] The order routing functionalities permit a NOM Participant to provide access and connectivity to other Participants as well as utilize such access for themselves. The Exchange notes that one NOM Participant is eligible for payments under MARS, while another NOM Participant might potentially be liable for transaction charges associated with the execution of the order, because those orders were delivered to the Exchange through a NOM Participant's connection to the Exchange and that Participant qualified for the MARS Payment.

[4] To qualify for MARS, the Participant's routing system (''System'') is required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. Further, the Participant's System would also need to cause NOM to be one of the top three default destination exchanges for (a) individually executed marketable orders if NOM is at the national best bid or offer (''NBBO''), regardless of size or time or (b) orders that establish a new NBBO on NOM's Order Book, but allow any user to manually override NOM as a default destination on an order-by-order basis. Any NOM Participant would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies NOM that it appears to be robust and reliable. The Participant remains solely responsible for implementing and operating its System. *See* Chapter XV, Section 2(6).

[5] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[6] The term ''Non-NOM Market Maker'' or (''O'') is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[7] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[8] The term ''Joint Back Office'' or ''JBO'' applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer as of September 1, 2014. A JBO participant is a Participant that maintains a JBO arrangement with a clearing broker-dealer (''JBO Broker'') subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed in Chapter XIII, Section 5.

[9] Eligible Contracts do not include Mini Option orders. Mini Options are further specified in Chapter XV, Section 2(4).

[10] Average Daily Volume is all Eligible Contracts daily in a month aggregating Penny and Non-Penny Pilot Options.

[11] A Participant will not be entitled to receive any other revenue for the use of its System specifically with respect to orders routed to NOM. The Exchange believes that MARS Payment will subsidize the costs of NOM Participants in providing the routing services.

the NOM Participant qualified for the Customer and Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 in Chapter XV, Section 2(1). The Exchange believes that as proposed, MARS will continue to attract higher volumes of electronic equity and ETF options volume to the Exchange from non-NOM Participants as well as NOM Participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to add a new Tier 5 with an ADV of 45,000 contracts and pay the MARS Payment in the amounts described above is reasonable because the amendments will attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all NOM Participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The expanded MARS Payments should enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner. The amendment to add Tier 5 will incentivize NOM Participants to achieve an even higher Penny Pilot Options Rebate, provided the NOM Participant is eligible for MARS. Further, the tier structure will allow NOM Participants to price their services at a level that will enable them to attract order flow from market participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver orders directly to the Exchange's System.

The Exchange's proposal to add a new Tier 5 and pay the MARS Payment in the amounts described above is equitable and not unfairly discriminatory because the Exchange will uniformly pay all NOM Participants the rebates specified in the proposed MARS Payment tiers provided the NOM Participant has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange are equitable and not unfairly discriminatory because any qualifying NOM Participant that offers market access and connectivity to the Exchange and/or utilize such functionality themselves may earn the MARS Payments for all Eligible Contracts.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In sum, if the fee changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Further, the Exchange's proposal does not impose an undue burden on intra-market competition because the Exchange will uniformly pay all NOM Participants the rebates specified in the proposed MARS Payment tiers provided the NOM Participant has executed the requisite number of Eligible Contracts. Moreover, any qualifying NOM Participant that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the proposed MARS Payment for all Eligible Contracts.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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–NASDAQ–2017–079 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–079. 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

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

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–NASDAQ–2017–079, and should be submitted on or before September 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–17168 Filed 8–14–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15240 and #15241; Oregon Disaster Number OR–00086]**

### Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Oregon

**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–4328–DR), dated 08/08/2017.

*Incident:* Severe Winter Storms, Flooding, Landslides, and Mudslides.

*Incident Period:* 01/07/2017 through 01/10/2017.

**DATES:** Issued on 08/08/2017.

*Physical Loan Application Deadline Date:* 10/10/2017.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/08/2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 08/08/2017, Private Non-Profit organizations that provide essential services of a 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:* Columbia, Deschutes, Hood River, Josephine.

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 15240B and for economic injury is 152410.

(Catalog of Federal Domestic Assistance Number 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2017–17174 Filed 8–14–17; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public notice: 10083]**

### International Joint Commission: Invites Public Comment on Review of Emergency Levels for Rainy and Namakan Lakes

**AGENCY:** Department of State.

**ACTION:** International Joint Commission: Invites Public Comment on Review of Emergency Levels for Rainy and Namakan Lakes.

**SUMMARY:** The International Joint Commission (IJC) announced today that it is inviting public comment on Emergency Levels for Rainy and Namakan Lakes (also known as Rule Curves). Comments will be accepted at public hearings and by mail, email and on-line until September 1, 2017. Following receipt of the International Rainy and Namakan Lakes Rule Curves Study Board's final report in late June, the International Joint Commission will be holding public hearings in the basin on its own report. Draft Changes to the Rainy and Namakan Lakes Rule Curves for Public Comment. The Commission is considering proposed changes to its Orders of Approval for the emergency regulation of Rainy and Namakan Lakes that have been recommended by the Study.

**DATES:** Commissioners will be present to hear comments at four public hearings throughout the basin from August 16 to 18, 2017. A public comment period on the Commission's report will also be open from July 24 to September 1, 2017.

**ADDRESSES:** The public hearings will be held at the following locations:

Wednesday, Fort Frances, Ontario
August 16: Fort Frances Library—Shaw Hub Room, 601 Reid Avenue, Fort Frances, ON P9A 0A2, 7:00 p.m.–9:00 p.m.

Thursday, Kabetogama, Minnesota
August 17: Kabetogama Lake Community Centre, 9707 Gamma Road, Kabetogama, MN 56669, 3:00 p.m.–5:00 p.m.

Thursday, International Falls, Minnesota
August 17: Backus Community Centre—Conference Room 101/102, 900 5th Street, International Falls, MN 56649, 7:00 p.m.–9:00 p.m.

Friday, Rainy River, Ontario
August 18: Rainy River Recreation Centre, 302 Broadway Avenue, Rainy River, ON P0W 1L0, 9:30 a.m.–11:30 a.m.

**FOR FURTHER INFORMATION CONTACT:**

Sarah Lobrichon (Ottawa), 613–992–5368, *lobrichons@ottawa.ijc.org*

Frank Bevacqua (Washington), 202–736–9024, *bevacqauf@washington.ijc.org*

**SUPPLEMENTARY INFORMATION:** The Commission's proposal relating to the Emergency Regulation of Levels on Rainy and Namakan Lakes are centered on five general themes:

*Changes to existing Rule Curves:* Alternative C for the rule curves for Rainy and Namakan lakes, which includes a rule curve for high flood risk years for Rainy Lake, should be adopted.

*An expanded role for the Water Levels Committee (WLC) of the International Rainy-Lake of the Woods Watershed Board (IRLWWB):* The WLC should be empowered to target specific levels outside of the middle portion of the rule curve for each lake. New operational guidelines are needed for the WLC, and further guidance, in the form of a refined directive for the IRLWWB and the WLC, is needed.

*Adaptive Management:* The Commission will work with the

[15] 17 CFR 200.30–3(a)(12).

IRLWWB to determine how best to implement an adaptive management strategy in the medium and long term planning and activities of both the IRLWWB and the Commission in the basin.

*Stakeholder Concerns:* The views of stakeholders, as heard through the Commission and Study Board engagement and hearings, will be communicated to governments.

*Engagement with Indigenous Communities:* The Commission endorses the Study Board's recommendations regarding improving engagement and collaboration with Tribes, First Nations, and Métis communities.

Public input is essential to the Commission's rendering of a final decision to proceed with the proposed changes to the management of emergency levels and flows of the Rainy and Namakan Lakes, and to the Commission's perspective on changes to the operations and guidance provided to the Water Levels Committee, engagement with Tribes, First Nations, and Métis, and adaptive management.

The International Joint Commission was established under the Boundary Waters Treaty of 1909 to help the United States and Canada prevent and resolve disputes over the use of the waters the two countries share. Its responsibilities include investigating and reporting on issues of concern when asked by the governments of the two countries.

Under the Rainy Lake Convention, the IJC determines when emergency conditions exist in the Rainy Lake watershed, by reason of high or low water, and adopts measures of control with respect to the dams at Kettle Falls and International Falls-Fort Frances. For more information, visit the Commission's Web site at *http://www.ijc.org.*

**Charles A. Lawson,**

*Secretary, U.S. Section, International Joint Commission, Department of State.*

[FR Doc. 2017–17200 Filed 8–14–17; 8:45 am]

**BILLING CODE 4710–14–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Government/Industry Aeronautical Charting Forum Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

**DATES:** The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet October 24, 2017, from 8:30 a.m. to 5:00 p.m. The Charting Group will meet October 25 and 26, 2017, from 8:30 a.m. to 5:00 p.m. and October 27, 2017, from 8:30 a.m. to 12:00 noon.

**ADDRESSES:** The meeting will be held at the AOPA National Aviation Community Center, 296 Bucheimer Road, Frederick, MD 21701.

**FOR FURTHER INFORMATION CONTACT:** For information relating to the Instrument Procedures Group, contact John Bordy, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK 73125; telephone: (405) 954–0980.

For information relating to the Charting Group, contact Valerie S. Watson, FAA, Aeronautical Information Services, Governance & Standards, AJV–553, 1305 East-West Highway, SSMC4, Station 3409, Silver Spring, MD 20910; telephone: (301) 427–5155.

**SUPPLEMENTARY INFORMATION:** The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, and new aeronautical charting and air traffic control initiatives.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 6, 2017, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the forum by providing a copy to the person listed in the **FOR FURTHER INFORMATION** section not later than October 6, 2017. Public statements will only be considered if time permits.

**Valerie S. Watson,**

*Co-Chair, Aeronautical Charting Forum.*

[FR Doc. 2017–17145 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in Vermont

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA.

**SUMMARY:** This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C.139(*l*)(1). The actions relate to a proposed highway project, the Middlebury Bridge and Rail Project on Main Street and Merchants Row over the Vermont Western Rail Corridor in the Town of Middlebury, Addison County, Vermont. Those actions grant approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 12, 2018. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Mr. Kenneth R. Sikora, Jr., Environmental Program Manager, Federal Highway Administration, 87 State Street, Room 216, Montpelier, Vermont 05602; telephone: (802) 828–4573; email: *Kenneth.Sikora@dot.gov.* The FHWA Vermont Division Office's normal business hours are 8:00 a.m. to 4:30 p.m. (eastern time). For the Vermont Agency of Transportation: Mr. Wayne Symonds, Project Supervisor, Vermont Agency of Transportation, One National Life Drive, Montpelier, Vermont 05633; telephone: (808) 828–0055; email: *Wayne.Symonds@vermont.gov.* The Vermont Agency of Transportation's normal business hours are 7:45 a.m. to 4:30 p.m. (eastern time).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA, has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing approvals for the following highway project in the State of Vermont: The Middlebury Bridge and Rail Project, Federal-aid Project Number WCRS(23), in the Town of Middlebury, Addison County. The project provides for the replacement of Bridges No. 102 and No. 2, carrying Vermont Route 30/Town Highway 2 (Main Street) and Town Highway 8 (Merchants Row) respectively, over the Vermont Western Rail Corridor (VWRC) railroad track in downtown Middlebury. The bridges

will be replaced by constructing a single tunnel to carry the railroad under both Main Street and Merchants Row. The general purposes of the project are to improve safety, address the deteriorated conditions that have developed at both bridges, and to meet current roadway and railroad design standards. Because of the foreseeable need to provide for increased rail height during the design life of the structure, the project includes lowering the grade of the railroad for approximately 3,600 feet along the rail corridor. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Revised Environmental Assessment (REA) for the project, approved on July 21, 2017, in the FHWA Finding of No Significant Impact (FONSI) issued on July 21, 2017, and/or in other documents in the FHWA project files. The REA, FONSI, and other project records are available by contacting the FHWA or the Vermont Agency of Transportation at the addresses provided above. The FHWA REA and FONSI can also be viewed and downloaded from the project Web site at *http://vtrans.vermont.gov/projects/middlebury/environmental-assessment-individual-chapters.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

5. *Executive Orders:* E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(*l*)(1).

Issued on: August 4, 2017.

**Kenneth R. Sikora, Jr.,**

*Environmental Program Manager, Montpelier, Vermont.*

[FR Doc. 2017–16975 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2006–25837]**

### Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on July 27, 2017, the Charlotte Area Transit System (CATS) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at Title 49 CFR part 219, *Control of Alcohol and Drug Use.* FRA assigned the petition docket number FRA–2006–25837.

CATS has provided rail fixed guideway public transit service in the Charlotte, North Carolina metropolitan area since 2007 with its original 9.6-mile Blue Line system that operates from South Charlotte to Center City Charlotte. This portion features a shared corridor with Norfolk Southern Railway (NS), including separation of track centers by 40 feet or more and limited connections with NS at two shared highway-rail grade crossings at East Hebron Street and Sweden Road. CATS and NS signal and train control employees maintain their own respective crossing equipment. CATS is currently constructing a 9.3-mile extension of this Blue Line (LYNX BLE) which will provide service from Center City Charlotte to a terminus on the University of North Carolina campus with revenue service expected to begin by March 31, 2018. This extension will again share a corridor with NS, including a 75-foot track center separation and one limited connection with NS at a shared highway-rail grade crossing at 16th Street. CATS employees will continue to maintain crossing equipment on the CATS side of the corridor only, with NS employees maintaining the equipment on the NS side.

CATS seeks relief from 49 CFR part 219 because it is already in compliance with Federal Transit Administration drug and alcohol regulations at 49 CFR part 655. CATS asserts this compliance provides an equivalent level of safety consistent with FRA's alcohol and drug regulations in part 219. CATS states that such a waiver will not result in any reduction in safety at the highway rail grade crossings it shares with NS and will preserve consistency throughout the CATS system for already-existing alcohol and drug policies.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 29, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See

also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC, on August 10, 2017.

**John Karl Alexy,**

*Director, Office of Safety Analysis.*

[FR Doc. 2017–17224 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### [PHMSA–2016–0009] NEXUS Gas Transmission, L.L.C.; [PHMSA–2016–0072] Magellan Midstream Partners, L.P.; Pipeline Safety: Requests for Special Permit

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice and extension of comment period.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) is extending the public comment period by 60 days for two special permit requests and to announce that the Draft Environmental Assessment (DEA) for each request is now available in the respective docket for review and comments. At the conclusion of the extended comment period, PHMSA will review the comments received for each notice as part of its evaluation to grant or deny the special permit requests.

**DATES:** Submit any comments regarding either of these special permit requests by October 16, 2017.

**ADDRESSES:** You may submit comments by the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–366–4566.
- *Mail or Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard showing the special permit number. Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

**Note:** Comments including any personal information provided, are posted without changes or edits to *http://www.regulations.gov.* There is a privacy statement published on *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:**

*General:* Ms. Kay McIver by telephone at (202) 366–0113, or by email at *Kay.McIver@dot.gov.*

*Technical:* Mr. Steve Nanney by telephone at (713) 628–7479, or by email at *Steve.Nanney@dot.gov.*

**SUPPLEMENTARY INFORMATION:** PHMSA has received two special permit requests from:

1. NEXUS Gas Transmission, L.L.C. (NEXUS), seeking a waiver from the Federal odorization regulations of 49 CFR 192.625, and

2. Magellan Midstream Partners, L.P., (Magellan) seeking a waiver from 49 CFR 195.432, to allow for a transitional staged breakout tank inspection schedule.

Notice of the special permits requests were published in the **Federal Register** on February 23, 2016, (81 FR 9075) and September 12, 2016, (81 FR 62796), respectively. The special permit requests include a technical analysis and DEA provided by the operators and are available at *http://www.regulations.gov* under their assigned docket numbers. We invite interested persons to participate by reviewing the special permit requests and DEAs and submitting written comments, data, or other views. Please include any comments on potential safety and environmental impacts that may result if each special permit is granted.

Before issuing a decision on the special permit requests, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny the requests.

Issued in Washington, DC, on August 10, 2017, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2017–17213 Filed 8–14–17; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0038]**

### Agency Information Collection Activity: Information From Remarried Widow/er

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2017.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy Kessinger, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0038'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

**Authority:** 38 U.S.C. 1542.

*Title:* Information from Remarried Widow/er (VA Form 21P–4103).

*OMB Control Number:* 2900–0038.

*Type of Review:* Revision of a Currently Approved Collection.

*Abstract:* 38 U.S.C. 1542 authorizes VA to pay Pension benefits to the surviving dependent children of a deceased Veteran if said children are not in the custody of a surviving spouse eligible for Pension benefits under 38 U.S.C. 1541, subject to certain annual income limitations, as well as net worth limitations set forth in 38 U.S.C. 1543. 38 U.S.C. 1503 governs determinations with respect to annual income under 38 U.S.C. Chapter 15.

VBA uses VA Form 21P–4103 to collect the income and net worth information necessary to determine the eligibility to Pension benefits of the surviving dependent children of a deceased Veteran after an eligible surviving spouse remarries, which terminates the surviving spouse's eligibility to benefits. VBA uses the information to determine eligibility to, and the amount of, any monetary benefits due to the surviving dependent children of the deceased Veteran.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 333 hours.

*Estimated Average Burden per Respondent:* 20 minutes.

*Frequency of Response:* Once.

*Estimated Number of Respondents:* 1,000.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Department Clearance Officer, Office of Quality and Compliance, Department of Veterans Affairs.*

[FR Doc. 2017–17180 Filed 8–14–17; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0806]**

### Agency Information Collection Activity Under OMB Review: Ankle Conditions Disability Benefits Questionnaire

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 14, 2017.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0806'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0806'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Ankle Conditions Disability Benefits Questionnaire (VA Form 21–0960M–2).

*OMB Control Number:* 2900–0806.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 21–0960 series is used to gather necessary information from a claimant's treating physician regarding the results of medical examinations. VA gathers medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits. The Disability Benefit Questionnaire title will include the name of the specific disability for which it will gather information. VAF 21–0960M–2, Ankle Conditions Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of an ankle condition.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 42, on March 6, 2017, pages 12702 and 12703.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 15,000.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 30,000.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Department Clearance Officer, Office of Quality and Compliance, Department of Veterans Affairs.*

[FR Doc. 2017–17184 Filed 8–14–17; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0658]**

### Agency Information Collection Activity: Lender's Staff Appraisal Reviewer Application

**AGENCY:** Loan Guaranty Service, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Loan Guaranty Service, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2017

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0658'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Authority:* Public Law 104–13; 44 U.S.C. 3501–3521.

*Title:* VA FORM 26–0785, Lender's Staff Appraisal Reviewer (SAR) Application.

*OMB Control Number:* 2900–0658.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Title 38 U.S.C. 3702(d) authorizes VA to establish standards for lenders making automatically guaranteed loans and 38 CFR 36.4344 establishes requirements and procedures for lenders in being approved to perform the functions under the Lender Appraisal Processing Program (LAPP).

*Affected Public:* Individuals (employees of lenders making applications).

*Estimated Annual Burden:* 200 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 2,400 per year.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Department Clearance Officer, Office of Quality and Compliance, Department of Veterans Affairs.*

[FR Doc. 2017–17186 Filed 8–14–17; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0807]**

### Agency Information Collection Activity Under OMB Review: Neck (Cervical Spine) Conditions Disability Benefits Questionnaire

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 14, 2017.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0807'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0807'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Authority:* 44 U.S.C. 3501–21.

*Title:* Neck (Cervical Spine) Conditions Disability Benefits Questionnaire (VA Form 21–0960M–13)

*OMB Control Number:* 2900–0807.

*Type of Review:* Reinstatement of a currently approved collection.

*Abstract:* VA Form 21–0960 series is used to gather necessary information from a claimant's treating physician regarding the results of medical examinations. VA gathers medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits. The Disability Benefit Questionnaire title will include the name of the specific disability for which it will gather information. VAF 21–0960M–13, Neck (Cervical Spine) Conditions Disability Benefits Questionnaire, will gather information related to the claimant's diagnosis of a cervical spine condition.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 42, on March 6, 2017, 2017, page 12703.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 37,500.

*Estimated Average Burden per Respondent:* 45 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 50,000.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Department Clearance Officer, Office of Quality and Compliance, Department of Veterans Affairs.*

[FR Doc. 2017–17183 Filed 8–14–17; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0711]**

### Agency Information Collection Activity: VBA Loan Guaranty Service Lender Satisfaction Survey

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2017.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0711'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each

collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Authority:* Public Law 104–13; 44 U.S.C. 3501–3521.

*Title:* VBA Loan Guaranty Service Lender Satisfaction Survey.

*OMB Control Number:* 2900–0711.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* As part of the agency's continuing commitment to improve the services provided to veterans, VA will conduct the VBA Loan Guaranty Service Lender Satisfaction Survey. The proposed effort will measure lender satisfaction with the various aspects of the VA Home Loan Guaranty program.

*Affected Public:* Private Sector.

*Estimated Annual Burden:* 69 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 275.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Department Clearance Officer, Office of Quality and Compliance, Department of Veterans Affairs.*

[FR Doc. 2017–17185 Filed 8–14–17; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0601]**

### Agency Information Collection Activity: Requirements for Interest Rate Reduction Refinancing Loans

**AGENCY:** Loan Guaranty Service, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Loan Guaranty Service, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comments in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2017.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy Kessinger, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0601'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy Kessinger at (202) 632–8924.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Authority:* Public Law 104–13; 44 U.S.C. 3501–3521.

*Title:* Requirements for Interest Rate Reduction Refinancing Loans.

*OMB Control Number:* 2900–0601.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Pursuant to 38 U.S.C. 3710, VA may guarantee loans to veterans to refinance existing mortgage loans previously guaranteed by VA provided the veteran still owns the property used as security for the loan. Lenders must collect certain information concerning the veteran and the veteran's credit history (and spouse or other co-borrower, as applicable), in order to properly underwrite delinquent Interest Rate Reduction Refinancing Loans (IRRRLs). Under these requirements, VA requires that the lender provide VA with the credit information to assure itself that IRRRLs to refinance delinquent loans are underwritten in a reasonable and prudent manner.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 25 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 50.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Department Clearance Officer, Office of Quality and Compliance, Department of Veterans Affairs.*

[FR Doc. 2017–17181 Filed 8–14–17; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0029]**

### Agency Information Collection Activity: Offer To Purchase and Contract of Sale, Credit Statement of Prospective Purchaser, and Addendum to VA Form (VIRGINIA)

**AGENCY:** Loan Guaranty Service, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Loan Guaranty Service, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 16, 2017.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@*

*omb.eop.gov.* Please refer to ''OMB Control No. 2900–0601'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor at (202) 461–5870.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

**Authority:** Public Law 104–13; 44 U.S.C. 3501–3521.

*Title:* VA Form 26–6705, offer to purchase and contract of sale, VA Form 26–6705b, credit statement of prospective purchaser, and VA Form 26–6705d, addendum to VA Form 26–6705 (Virginia).

*OMB Control Number:* 2900–0029.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Under the authority of 38 U.S.C. 3720(a)(5) and (6) the Department of Veterans Affairs (VA) acquires properties for sale to the general public utilizing a private Service Provider. The Service Provider utilizes private listings and sales brokers to sell VA properties.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 17,458 hours.

*Estimated Average Burden per Respondent:* 20 minutes and 5 minutes (average 15 minutes between the three forms).

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 53,500.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Department Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2017–17182 Filed 8–14–17; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

Vol. 82 Tuesday,
No. 156 August 15, 2017

Part II

## Department of Commerce

Bureau of Industry and Security

15 CFR Parts 740, 772 and 774
Wassenaar Arrangement 2016 Plenary Agreements Implementation; Final Rule

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 740, 772, and 774**

**[Docket No. 170309249–7249–01]**

**RIN 0694–AH35**

## Wassenaar Arrangement 2016 Plenary Agreements Implementation

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

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) maintains, as part of its Export Administration Regulations (EAR), the Commerce Control List (CCL), which identifies certain items subject to Department of Commerce jurisdiction. This final rule revises the CCL, as well as corresponding parts of the EAR, to implement changes made to the Wassenaar Arrangement List of Dual-Use Goods and Technologies (WA List) maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement, or WA) at the December 2016 WA Plenary meeting. The Wassenaar Arrangement advocates implementation of effective export controls on strategic items with the objective of improving regional and international security and stability. This rule harmonizes the CCL with the agreements reached at the 2016 Plenary meeting by revising Export Control Classification Numbers (ECCNs) controlled for national security reasons in each category of the CCL, as well as making other associated changes to the EAR.

**DATES:** This rule is effective August 15, 2017, except that:

1. The effective date for amendatory instruction 30 (ECCN 4A003 in Supplement No. 1 to part 774) is September 25, 2017; and

2. the effective date for amendatory instruction 2 (§ 740.7 of the EAR) is November 24, 2017.

**FOR FURTHER INFORMATION CONTACT:** For general questions, contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482–2440 or by email: *Sharron.Cook@bis.doc.gov*.

For technical questions contact:

Categories 0, 1 & 2 of the CCL: Joseph Giunta at 202–482–3127.

Category 3 of the CCL: Brian Baker at 202–482–5534.

Categories 4 & 5 of the CCL: Aaron Amundson 202–482–0707.

Category 6 (optics) of the CCL: Chris Costanzo at 202–482–5299.

Category 6 (lasers) of the CCL: Mark Jaso at 202–482–0987.

Category 6 (sensors and cameras) of the CCL: John Varesi 202–482–1114.

Category 8 of the CCL: Michael Tu 202–482–6462.

Categories 7 & 9 of the CCL: Daniel Squire 202–482–3710 or Reynaldo Garcia 202–482–3462.

Category 9x515 (Satellites) of the CCL: Mark Jaso at 202–482–0987 or Reynaldo Garcia at 202–482–3462.

Category ''600 Series'' (Munitions Items) of the CCL: Christopher Williams at 202–482–6023 or Heather Moore at 202–482–4786.

**SUPPLEMENTARY INFORMATION:**

### Background

The Wassenaar Arrangement (Wassenaar or WA) on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is a group of 41 like-minded states committed to promoting responsibility and transparency in the global arms trade, and preventing destabilizing accumulations of arms. As a Participating State, the United States has committed to controlling for export all items on the WA control lists. The lists were first established in 1996 and have been revised annually thereafter. Proposals for changes to the WA control lists that achieve consensus are approved by Participating States at annual Plenary meetings. Participating States are charged with implementing the agreed list changes as soon as possible after approval. The United States' implementation of WA list changes ensures U.S. companies have a level playing field with their competitors in other WA Participating States.

The changes in this rule, which reflect the changes to the WA control lists that were approved at the December 2016 WA Plenary meeting, update the corresponding items listed in the EAR, and reflect the most recent changes in technologies and conditions.

### Revisions to the Commerce Control List Related to WA 2016 Plenary Agreements

*Revises (50) ECCNs:* 1A004, 1A007, 1B001, 1C007, 1C608, 1E001, 1E002, 2A001, 2B001, 2B005, 2B991, 2D992, 2E003, 3A001, 3A002, 3A991, 3B001, 3C001, 3E001, 3E002, 3E003, 4A003, 4D001, 4D993, 5A001, 5B001, 5E001, 5A002, 5A003, 5D002, 5E002, 6A001, 6A003, 6A005, 6A008, 6D003, 6E003, 7D003, 7D004, 7E001, 7E003, 7E004, 8A002, 8C001, 9A001, 9A004, 9A515, 9B002, 9B009 and 9E003.

*License Exception eligibility additions:* 3A001.b.12 to LVS, and 3A001.a.14 to GBS.

*License Exception eligibility expansion:* TSR and STA for ECCNs 4D001 and 4E001.

#### Category 1 Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins''

*1A004 Protective and Detection Equipment and ''Components''*

ECCN 1A004 is amended by adding Note 5 to the Related Controls paragraph to make sure the public knows that 1A004 does not control radionuclides incorporated in detection equipment—such materials are subject to the licensing jurisdiction of the Nuclear Regulatory Commission (See 10 CFR part 110). This rule also removes the definition of 'adapted for use in war' from the Related Definitions paragraph because the WA has agreed to remove that term from Items in paragraphs a.2, b.2 and c.2, as well as from Technical Note 1, because the phrase did not help clarify the control text. This rule adds a definition of 'radioactive materials' in Technical Note 3 that uses the same descriptive wording used in the removed definition of 'adapted for use in war.' This new definition does not change the scope of this ECCN because much of the text of the removed definition was retained in the control parameters. These revisions are made to more precisely describe the controlled detection equipment. At the WA Plenary meeting, the WA noted that the definition of biological agents is used in an entry on the WA dual-use list and an entry on the WA munitions list. Therefore, to make it clear that the definition applied to both entries, the WA moved it to the WA Definitions, which applies to both WA lists. In the EAR, while the term 'biological agents' appears in other ECCNs on the CCL, the definition used in ECCN 1A004 only applies to that ECCN. It would be inappropriate to move that definition to Part 772, which defines terms that can be applied universally in the EAR. Therefore, this rule removes the Technical Note to be consistent with the WA list and moves the definition for the term 'biological agents' to the Related Definitions Section of ECCN 1A004.

*1A007 Equipment and Devices, ''Specially Designed'' To Initiate Charges and Devices Containing ''Energetic Materials,'' by Electrical Means*

The heading of ECCN 1A007 is amended by adding double quotes around the term ''energetic materials,''

because this is a defined term in the WA List, as well as in § 772.1 of the EAR.

*1B001 Equipment for the Production or Inspection of ''Composite'' Structures or Laminates Controlled by 1A002 or ''Fibrous or Filamentary Materials'' Controlled by 1C010*

The Technical Note to Items paragraph .b is amended by revising the parameters in the definition of 'tape-laying machines.' The Technical Note to paragraph 1B001.g is amended by revising the parameters in the definition for 'tow-placement machines.' These definitions were designed to aid in determining the control status of tow placement and tape laying equipment. These machines are identified based on the type of ''fibrous or filamentary'' material they process. The Missile Technology Control Regime (MTCR) adopted the WA definition in order to facilitate implementation by Participating States that adhered to both regimes. However, when the MTCR adopted the WA control parameters, they added an additional significant digit to ensure that Tape Laying Machines and Tow/Fiber Placement machines were accurately delineated at 1 inch, which is used in industry. Thus, references to 25 mm were changed to 25.4 mm (1 inch) and 305 mm is changed to 304.8 mm (12 inches). Lastly, the Technical Note to 1B001, which defines 'filament bands,' is amended by clarifying that it includes those coated with dry powder. These revisions are very minor, and therefore, BIS anticipates no change in submissions of license applications.

*1C007 Ceramic Powders, Ceramic-''Matrix'' ''Composite'' Materials and 'Precursor Materials'*

The Heading of ECCN 1C007 is amended by removing the phrase ''non-''composite'' ceramic materials'' and adding single quotes around the term 'precursor materials,' to harmonize with revisions made to the List of Items Controlled section. The MT control paragraph is amended by removing Items paragraphs .d and .f and adding .c for consistency to changes in the List of Items Controlled section. The Special Conditions for STA paragraph is amended by removing Items paragraph d. to harmonize with revisions made to the List of Items Controlled section.

Items paragraph .a is revised by replacing ''single or complex borides of titanium'' with ''titanium diboride ($TiB_2$) (CAS 12045–63–5)'', and Items paragraph .b is removed and reserved because 1C007.a and .b list only borides of titanium in powered and monolithic (*i.e.,* non-composites) forms, while in practice those controls apply only to titanium diboride ($TiB_2$—CAS# 12045–63–5), being the only stoichiometric compound of boron and titanium. This revision will result in no change in the number of license application submissions BIS receives annually.

The control text on ceramic matrix composites (CMCs) in 1C007 was formerly split into three Items paragraphs, .c, .d and .f. This rule combines these three paragraphs under 1C007.c. Items paragraph .c is moved to c.1.b (no scope change), Items paragraph .d is moved to c.2, and Items paragraph .f is moved to c.1.a (no scope change).

Former Items paragraph 1C007.d, which is transferred to 1C007.c.2, is revised to clarify the control and add some novel ceramic composite material. The formerly used phrase ''with or without metallic phase'' did not contribute to the text clarity. Metallic phases in a ceramic-ceramic composite are impurities from incomplete reactions. Often, pockets of residual metallic phases are found in these materials, but it is not a desired feature; it is just an undesirable by-product of the manufacturing process. The formerly used phrase ''incorporating particles, whiskers or fibers'' did not influence the scope of the control because it listed all possible types of ceramic reinforcements used in CMCs. Thus, these two phrases are removed, although the removal of the phrases does not change the scope of the control and improves clarity of the text. The phrase 'ceramic-ceramic' is replaced with 'ceramic-''matrix'',' so as to control carbon fiber reinforced SiC matrix composites (C-SiC). These revisions aim to improve the control text clarity and introduce a new control of a novel, militarily significant material family. BIS receives less than five applications a year for this ECCN. BIS anticipates that adding this novel material, which has not yet become popular with industry, may only increase that number by one or two applications a year.

Paragraph 1C007.e is amended by adding ''specially designed'' and making other editorial revisions, because it was agreed that the only precursors that are controlled under this paragraph are those that are specially designed (*i.e.,* specially formulated) for the production of controlled ceramic materials. In addition, the control text is modified to harmonize with WA format by replacing ''for producing'' with the defined term ''for the ''production.'' '' This rule also adds a Technical Note to define 'precursor materials' to clarify the scope of control. These changes will narrow the scope of control and decrease license application submissions. Even though more specific text is being added to the parameter, which narrows the scope of control, this revision will result in no change in the annual number of license application submissions BIS receives, because BIS currently receives zero submissions annually under this paragraph.

*1C608 ''Energetic Materials'' and Related Commodities*

The Heading of 1C608 is amended by adding double quotes around the defined term ''energetic materials'' in order to clarify the scope and correct the oversight.

*1E001 ''Technology'' for the ''Development'' or ''Production'' of Certain Category 1 ECCNs*

ECCN 1E001 is amended by revising the Special Conditions for STA to remove reference to 1C007.d, because Items paragraph 1C007.d is transferred to 1C007.c.2 by this rule, which is already listed in this paragraph.

*1E002 Other ''Technology''*

ECCN 1E002 is amended by revising the Note to 1E002.c.2 by adding double quotes around the word ''technology'' to clarify the scope of the entry. The phrase ''the design or production of'' is removed from the Note as it is an unnecessary repetition of the text introduced in 1E002.c. This rule also revises 1E002.f to remove the reference to 1C007.d, which was moved to 1C007.c.2. 1C007.c is already referenced in 1E002.f.

**Annex to Category 1—List of Explosives**

The Annex to Category 1 List of Explosives is amended by adding a new paragraph 50 to read, ''50. FTDO (5,6-(3′,4′-furazano)- 1,2,3,4-tetrazine-1,3-dioxide)'', and by revising the punctuation in paragraph 49 to support this addition. As this is a military explosive, it will result in no change to license application submissions to BIS.

**Category 2—Materials Processing**

*2A001 Anti-Friction Bearings and Bearing Systems*

ECCN 2A001.a is amended by adding single quotes around the terms 'rings' and 'rolling elements,' as well as removing the citation to International Organization for Standardization (ISO) standards. This rule adds two (2) Technical Notes to define 'ring' and 'rolling element,' in order to clarify the scope of controls and to replace the reference to the ISO standard where these terms are defined.

*2B001 Machine Tools and Any Combination Thereof, for Removing (or Cutting) Metals, Ceramics or ''Composites''*

ECCN 2B001 is amended by removing the Note to Items paragraph b.2 regarding the inclusion of parallel mechanism machine tools in the control of b.2, because there is no international standard to measure a positioning accuracy or UPR (unidirectional positioning repeatability) for these machine tools. This rule also revises Items paragraphs b.2.b and b.2.c in order to accommodate the removal of Items paragraph b.2.d. Additionally, this rule removes Items paragraph b.2.d 'parallel mechanism machine tool technology,' including the Technical Note for reasons stated above. BIS estimates that there will be no change in license application submissions due to the removal of Items paragraph b.2.d 'parallel mechanism machine tool technology,' because the future of machine tools is in Computer Numeric Control (CNC), where software achieves in a simpler and more robust way what multiple rods and linkages and couplings involved in parallel mechanism machine tools achieve in terms of degrees-of-freedom and flexibility. In the past year, BIS has not received any license applications for parallel mechanism machine tools.

*2B005 Equipment ''Specially Designed'' for the Deposition, Processing and in Process Control of Inorganic Overlays, Coatings and Surface Modifications, as Follows, for Substrates*

The Heading of ECCN 2B005 is amended by removing the ambiguous term ''non-electronic'' before the word ''substrates,'' by adding the column locations in the table following 2E003.f ''Materials Processing Table; Deposition Techniques,'' where the information referred to in the Heading may be found. The Heading is also amended by removing the reference to the 'associated Notes,' because the Notes do not specify what is controlled by this ECCN.

*2B991 Numerical Control Units for Machine Tools and ''Numerically Controlled'' Machine Tools, n.e.s.*

ECCN 2B991 is amended by adding a hyphen to the term ''real-time processing'' in the introductory text of Items paragraph 2B991.b.2 to correct the format of the term.

*2D992 Specific ''Software''*

ECCN 2D992 is amended by adding a hyphen to the term ''real-time processing'' in the introductory text of Items paragraph 2D992.a.2 to correct the format of the term.

*2E003 Other ''Technology''*

ECCN 2E003 is amended by adding double quotes to the term ''technology'' in the Nota Bene (N.B.) that follows Items paragraph .f for consistency with the text in the control paragraph.

**Category 2E—Materials Processing Table; Deposition Techniques**

The Materials Processing Table is amended by revising paragraph 10 in the Notes to the Table on Deposition Techniques to more clearly state that Category 2 does not include ''technology'' for single-step pack cementation of solid airfoils. Paragraph 17 in the Notes to the Table on Deposition Techniques is revised by removing the term ''specially designed,'' which expands the exclusion note for ''technology'' for depositing diamond-like carbon. The introductory text to paragraphs 1 through 5 in the Accompanying Technical Information to Table on Deposition Techniques is amended by replacing the defined term ''technology'' with the term 'technical information' to be consistent with the heading and scope of this section.

**Category 3—Electronics**

*Product Group A. ''End Items,'' ''Equipment,'' ''Accessories,'' ''Attachments,'' ''Parts,'' ''Components,'' and ''Systems''*

Product Group A, Notes 1 and 2 and the N.B., which appear at the beginning of the product group, are amended by removing the reference to ''or 3A001.a.13'' and adding in its place ''to 3A001.a.14,'' because this rule adds Item paragraph 3A001.a.14.

*3A001 Electronic Items*

The RS license requirement paragraph and the License Exception LVS eligibility paragraph are amended by replacing the term ''microwave monolithic integrated circuit'' with the defined term ''monolithic microwave integrated circuit'' to harmonize with the newly defined term and changes in ECCN 3A001, and expanded to cover newly added Items paragraph b.12.

The license Exception LVS eligibility paragraph is expanded to include newly added Items paragraph b.12, which will result in fewer licensing application submissions for low level value shipments of these items.

The license Exception GBS eligibility paragraph is amended by expanding the range of eligibility to cover newly added Items paragraph a.14, which will result in fewer license application submissions to less sensitive destinations. The term TWTAs is replaced with 'vacuum electronic device' amplifiers, which is the new terminology in Items paragraph b.8.

The Note to 3A001.a is amended by adding ''Monolithic Microwave Integrated Circuits'' (''MMICs'') to the list of integrated circuits listed, because of the increased presence of MMICs in 3A001, as well as adding the definition of this term to part 772 of the EAR.

Paragraph 3A001.a.2 is expanded to encompass the scope of newly added 3A001.a.14. Specifically, this rule makes editorial capitalization corrections and adds ''integrated circuits that contain analog-to-digital converters and store or process the digitized data'' and ''Magnetic Random Access Memories (MRAMs)''.

Paragraph 3A001.a.5.a (analog-to-digital converters (ADCs)) is revised by updating the ADC control thresholds (resolution) for the higher performance ADCs to reflect the technology that is used in the commercial mainstream, which will result in a decrease of license application submissions. In addition, the unit for resolution is amended by replacing ''billion words per second'' with ''Giga Samples Per Second (GSPS)'' and ''million words per second'' with ''Mega Samples Per Second (MSPS)'' to clarify what is being measured for this parameter. Technical Notes 6 and 7 are also revised to clarify the explanation of the units for output rates. In addition, a Nota Bene is added to reference 3A001.a.14 for integrated circuits that contain ADCs and store or process the digitized data. Technical Notes 6 and 7 are also clarified accordingly.

Paragraph 3A001.a.7 is amended by adding a Nota Bene to reference 3A001.a.14 for integrated circuits having field programmable logic devices that are combined with an analog-to-digital converter.

Paragraph 3A001.a.14 is added to control integrated circuits that perform the same functionality of electronic assemblies, modules, or equipment described in paragraph 3A002.h. This addition of control will result in an increase of 50 or fewer license application submissions per year. Items paragraph 3A001.a.14.b.2 is moved to a.14.b.1 and a.14.b.2 is revised to read ''processing of digitized data'' to clarify the description of this parameter.

Paragraph 3A001.b is amended by adding a Technical Note 2 to define 'vacuum electronic devices' for the purpose of paragraph 3A001.b.1. This control has not been modernized in more than fifteen years, during which time substantial changes have occurred. Therefore, these amendments are

intended to modernize this entry. The term ''travelling wave tubes'' in the text has been changed to the more general term 'vacuum electronic devices' that also includes klystrons. Paragraph 3A001.b.1 is amended by replacing the undefined term 'electronic vacuum tubes' with the newly defined term 'vacuum electronic devices.' This term is also replaced in the introductory text of Notes 1 and 2. Paragraph 3A001.b.1.a and b.1.b are amended by replacing the term 'tubes' with 'vacuum electronic devices.' Paragraphs 3A001.b.1.a.1 through b.1.a.3 are amended by replacing the term 'tubes' with 'devices.' Paragraph 3A001.b.1.a.4 is amended by replacing the term 'helix tubes' with 'devices based on helix, folded waveguide, or serpentine waveguide circuits,' as well as adding a parameter, 'having a gridded electron gun,' in paragraph b.1.a.4.d for these devices. Paragraph 3A001.b.1.a.5 is added to expand the traveling wave 'vacuum electronic devices' control to include devices with a ''fractional bandwidth'' greater than or equal to 10% and with specified beams. BIS estimates that this change will increase license application submissions by no more than 10 annually. Paragraph 3A001.b.1.c is modernized to use the term 'thermionic cathodes' rather than the older and more specific term 'impregnated cathodes.' Paragraph 3A001.b.1.d is added to control 'vacuum electronic devices' with the capability to operate in a 'dual mode.' Finally, a clear definition of the term 'dual mode' is added in a Technical Note to avoid ambiguity and explain how a single device can switch between continuous wave operation and pulse mode operation.

Paragraph 3A001.b.2 is amended by replacing ''Microwave Monolithic Integrated Circuits (MMICs) power amplifiers'' with the correct terminology ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers. Also, a Nota Bene is added to reference 3A001.b.12 for ''MMIC'' amplifiers that have an integrated phase shifter.

Notes 2 and 3 of paragraph b.2.h are amended by adding double quotes around the acronym ''MMIC'' and ''MMICs.''

Paragraph 3A001.b.4.f, which is a parameter for microwave solid state amplifiers and microwave assemblies/modules, is removed and reserved, because 'transmit/receive modules' and 'transmit modules' are moved to b.12. This paragraph is moved because some people may not think to classify their MMICs with capabilities to transmit/receive under 3A001.b.4.f. Also, by separating transmit and transmit/receive modules from amplifiers, the framework for modifying their control threshold independently is created. A Nota Bene 2 is added to reference paragraph 3A001.b.12 for 'transmit/receive modules' and 'transmit modules.' Note 3 to paragraph 3A001.b.4 is removed, because 'transmit/receive modules' and 'transmit modules' are moved to b.12.

Paragraph 3A001.b.8 and b.9 are amended by replacing the term 'tubes' with the term 'vacuum electronic devices.' Also, this rule makes corrections in capitalization, as well as correcting the term ''Monolithic Microwave Integrated Circuit'' and adding the acronym ''MMIC''.

Paragraph 3A001.b.11 ''Frequency synthesizer'' ''electronic assemblies'' is amended by updating the parameters to align the 3A001.b.11 frequency synthesizer controls with the 3A002.d.3 signal generator controls. Specifically, Items paragraphs 3A001.b.11.a through .e are revised and b.11.c and .f are removed and reserved, which BIS estimates will decrease license application submissions by about 30 annually.

Paragraph 3A001.b.12 ''transmit/receive modules, transmit/receive MMICs, transmit modules, and transmit MMICs'' is added to control a mixture of new (MMICs) and existing controls (transmit/receive modules formerly controlled in paragraph 3A001.b.4). The control thresholds for 3A001.b.12 are nearly identical to those that were used in 3A001.b.4.f (transmit and transmit/receive modules), but adjusted so that 3A001.b.12 has an identical power level at 31.8 GHz, as specified in 3A001.b.4.c as 0.5 W (27 dBm). In addition, transmit modules and transmit/receive modules that have dimensional characteristics related to phased array antenna systems are distinct from amplifiers because they have phase control. Adding phase control as a control parameter ensures this distinction is clear. Furthermore, because transmit modules and transmit/receive modules are exported with or without a heat sink, a Technical Note is added to inform exporters that 3A001.b.12 includes those that are exported with or without a heat sink and that the heat sink measurements are not to be considered in the 3A001.b.12 dimensional metric. Lastly, this rule adds to the Technical Notes after Items paragraph b.12.d definitions for 'transmit/receive module,' 'transmit/receive MMIC,' 'transmit module,' and 'transmit MMIC.' It also adds quotation marks around the term MMIC in all places it is used by itself in 3A001.b.12, as it is a defined term in part 772 of the EAR. Related Control Note 1 is also revised to add 'transmit/receive modules' and 'transmit modules,' because there may be some overlap between b.12 and ITAR category XI. BIS estimates these revisions will not affect the annual number of license application submissions.

Paragraph 3A001.f ''rotary input type absolute position encoders'' is revised by adding ''and ''specially designed'' encoder rings, discs or scales therefor,'' in order to close the loophole in the control for these significant parts. BIS estimates this addition will result in an increase of no more than 5 license application submissions per year.

*3A002 General Purpose ''Electronic Assemblies,'' Modules and Equipment*

ECCN 3A002 is amended by revising Items paragraph c.4, to add the existing ''real-time bandwidth'' to the frequency mask trigger control and add commas to the definition of ''real-time bandwidth'' in § 772.1 of the EAR to clarify its meaning, resulting in paragraph 3A002.c.4.b moving to c.4.b.1 and the addition of a new subparagraph c.4.b.2. The citations in the Technical Notes 1 and 2 are updated to correspond to changes in 3A002.c.4.b. An exclusion Note is added for ''signal analyzers'' using only constant percentage bandwidth filters (also known as octave or fractional octave filters). BIS estimates these revisions will result in an increase of no more than 15 license application submissions per year. Paragraph 3A002.c.5 is removed and reserved, as it is moved to 3A002.c.4.b.2 to make ''real-time bandwidth'' (3A002.c.4.a) a prerequisite for control of ''frequency mask trigger'' functionality of signal analyzers in 3A002.c.4.

*3A991 Electronic Devices, and ''Components'' Not Controlled by 3A001*

ECCN 3A991 is amended by revising the Items paragraph introductory paragraph .g, paragraph g.1, and introductory paragraph g.2 to correspond with the changes made to paragraph 3A001.b. For an explanation about these revisions, see the rationale for 3A001.b revisions. BIS estimates these revisions will result in no change to license application submissions annually.

*3B001 Equipment for the Manufacturing of Semiconductor Devices or Materials*

ECCN 3B001.a.1 (equipment designed for epitaxial growth) is amended by replacing ''capable of producing'' with ''designed or modified to produce,'' to clarify the intended scope of control. BIS estimates that this change will result in a decrease of about 20 license application submissions per year.

*3C001 Hetero-Epitaxial Materials Consisting of a ''Substrate'' Having Stacked Epitaxially Grown Multiple Layers*

The exclusion Note to ECCN 3C001.d is amended by adding three non-sensitive p-type epitaxial layer materials, *i.e.,* GaAs, AlGaAs, InP. This Note excludes hetero-epitaxial materials for the manufacture of light-emitting diodes (LEDs). BIS estimates that this change will result in a decrease of about 5 license application submissions per year.

*3E001 ''Technology'' According to the General Technology Note for the ''Development'' or ''Production'' of Equipment or Materials Controlled by 3A, 3B and 3C*

ECCN 3E001 is amended by revising paragraph (a) of the License Exception TSR paragraph to replace ''Traveling wave tube'' with ''Vacuum electronic device amplifiers.'' Paragraph (c) of the License Exception TSR paragraph and Note 2 in the Related Controls are revised to harmonize the reference to MMICs to read ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers. Note 1 is amended by removing the phrase ''the ''production'' of,'' and Note 2 is amended by removing the phrase ''the ''development'' or ''production'' of,'' because these phrases do not add to the clarity of the Notes and are unnecessary.

*3E002 ''Technology'' Other Than That Controlled in 3E001 for the ''Development'' or ''Production'' of a ''Microprocessor Microcircuit'', ''Microcomputer Microcircuit'' and Microcontroller Microcircuit Core*

ECCN 3E002 is amended by revising the introductory text of Note 2 to remove reference to ''development'' and ''production'', because these terms are already referenced in the definition of ''technology,'' therefore there is no need to repeat this point in the control text. However, Note 3 is amended by adding the phrase ''the development or production of'' to clarify the scope of the Note.

*3E003 Other ''Technology'' for the ''Development'' or ''Production''*

ECCN 3E003.g is amended by replacing the term ''electronic vacuum tubes'' with the more modern and general term 'vacuum electronic devices,' which is defined in Technical Note 2 at the beginning of 3A001.b.

**Category 4—Computers**

*4A003 ''Digital Computers,'' ''Electronic Assemblies,'' and Related Equipment Therefor*

ECCN 4A003 is amended by revising the AT control paragraph in the License Requirements table and the Note to the License Requirements section in order to correspond to the revision in this rule that raises the ''adjusted peak performance'' (APP) from 12.5 to 16 weighted TeraFLOPS (WT) in Items paragraph 4A003.b. The APP is raised to address the need to track incremental improvements (*e.g.,* ''Moore's Law'') in micro-processor technology. The Congressional notification requirement set forth in subsection 1211(d) of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85, November 18, 1997, 111 Stat. 1629, 1932–1933, as amended; 50 U.S.C. 4604 note) provides that the President must submit a report to Congress 60 days before adjusting the composite theoretical performance level above which exports of digital computers to Tier 3 countries require a license. On July 27, 2017 the Secretary of Commerce, as the President's delegate, submitted to Congress a report to Congress that establishes and provides justification for the 16 WT control level using the APP formula. Therefore, this revision will become effective on September 25, 2017. BIS estimates that this revision will result in no change to license application submissions, because this revision is keeping pace with advancements in HPC technology.

*4D001 ''Software'' and 4E001 ''Technology''*

ECCNs 4D001 and 4E001 are amended by revising the License Exception TSR eligibility paragraph and License Exception STA Special Conditions paragraph to correspond to the revision in this rule that raises the ''adjusted peak performance'' (APP) from 12.5 to 16 weighted TeraFLOPS (WT) in Items paragraph 4A003.b, because these eligible countries for these license exceptions represent allies (Country Groups A:5 and A:6) and countries that do not pose a national security threat (Country Group B). The APP is raised to address the need to track incremental improvements (*e.g.,* ''Moore's Law'') in micro-processor technology. The APP is raised from 6.0 to 8.0 WT in Items paragraph 4D001.b.1 for software ''specially designed'' or modified for the development or production of equipment or software controlled by 4A001, 4A003, 4A004 or 4D001 (except 4D980, 4D993 or 4D994) and 4E001.b.1 for technology other than that controlled by 4E001.a for the development or production of digital computers. BIS estimates that this revision will result in no change to license application submissions, because this revision is keeping pace with advancements in HPC technology.

*4D993 ''Program'' Proof and Validation ''Software'', ''Software'' Allowing the Automatic Generation of ''Source Codes'', and Operating System ''Software''*

ECCN 4D993 is amended by correcting the Heading to add a hyphen between the words ''real'' and ''time'' in the term ''real-time processing.''

**Category 5—Part 1—''Telecommunications''**

*5A001 Telecommunications Systems, Equipment, ''Components'' and ''Accessories''*

ECCN 5A001 is corrected by replacing the word ''centre'' with ''center'' in the Technical Note of Items paragraph b.5.d. For telecommunication systems and equipment that employ functions of digital ''signal processing'' to provide 'voice coding,' the output rate is lowered from less than ''2,400 bit/s'' to ''700 bit/s'' in Items paragraph b.6 to reflect advancement in technology, which BIS estimates will result in no change to annual license application submissions.

*5B001 Telecommunication Test, Inspection and Production Equipment, ''Components'' and ''Accessories''*

ECCN 5B001 is amended by adding ''or'' to the end of Items paragraph b.2.a in the License Requirements section to correspond with removing and reserving Items paragraph b.2.c (telecommunication transmission or switching equipment employing a ''laser'' and coherent optical transmission or coherent optical detection techniques), including the Note and Technical Note, because this equipment is broadly available in all leading technology countries around the world. BIS estimates that this removal will result in 5 fewer license application submissions per year.

*5E001 ''Technology''*

ECCN 5E001 is amended by revising Related Controls Note (2) and Items paragraph 5E001.d to replace the term Microwave ''monolithic integrated circuits'' (MMIC) power amplifiers with ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers to correspond to revisions made to 3A001.b.2 in this rule. This rule moves the word ''required'' from the beginning of Items paragraph b.1 to follow the

term ''technology,'' in order to clarify the scope of the sentence. This rule also removes Items paragraph 5E001.c.1 ''Equipment employing digital techniques designed to operate at a ''total digital transfer rate'' exceeding 560 Gbits/s'' including the Technical Note, because this telecommunication technology is broadly available in all leading technology countries around the world. Even though BIS received 100 licenses for 5E001.c technology last year, most of them had other ECCNs included as well. BIS estimates that this removal will result in 5 fewer license application submissions per year. Items paragraph 5E001.c.2.c (technology for telecommunication transmission or switching equipment employing a ''laser'' and coherent optical transmission or coherent optical detection techniques) is removed and reserved, including the Note and Technical Note, to correspond with the removal of this equipment in 5B001.b.2.c by this rule. BIS estimates that this removal will result in 15 fewer license application submissions per year. The Note to Items paragraphs c.2.e and c.4.b are revised to remove the phrase ''the development or production of,'' because these terms are already referenced in the definition of ''technology'' and there is no need to be repetitive.

**Category 5—Part 2—''Information Security''**

Category 5—Part 2 is being restructured in order to simplify the text and focus the scope of controls. The introductory sentence in Note 3 in Category 5—Part 2 is amended by updating the scope of the Cryptography Note from ''ECCNs 5A002, 5A003, 5A004 and 5D002'' to ''ECCNs 5A002, 5D002.a.1, .b, and c.1.'' Paragraph a.5 is redesignated as paragraph a.4 in Note 3 to clean up the Note, and the phrase '', 5A003 or 5A004'' is removed from the Technical Note to paragraph b. in Note 3, to match the updated scope of the Cryptography Note.

Note 4 is removed and is replaced by the creation of positive text in 5A002.a to specify the items subject to control. Although the wording is different and positively stated, the scope of control remains the same except certain non-primary function uses of encryption are now excluded as noted below. The exclusion in Note 4 for entertainment, mass commercial broadcasts, digital rights management or medical records management is moved to Technical Note 1 in order to clarify that encryption used for those functions is not considered 'cryptography for data confidentiality' for purposes of Category 5—Part 2. 5A002.a.4 amends the text of the former Note 4 paragraph b to release products that use encryption for a non-primary function in certain circumstances.

*5A002 ''Information Security'' Systems, Equipment and ''Components''*

ECCN 5A002 is amended by redesignating Related Control paragraph (3) as (5) and moving the Nota Bene from the beginning of 5A002.a to a new Related Control paragraph (3) in the List of Items Controlled section, which directs people to ECCNs 7A005, 7D005 and 7E001 for Global Navigation Satellite Systems (GNSS) receiving equipment containing or employing decryption, and related software and technology. Also a new Related Control Note (4) is added to provide examples to clarify the scope of Items paragraph 5A002.a.4, and a Nota Bene is added after Items paragraph 5A002.a.4 to point to Related Control Note (4). Items paragraph 5A002.a, including the Technical Notes and Notes, is amended to restructure it and improve readability, so that it includes an introduction of the term 'cryptography for data confidentiality;' the establishment of a Technical Note to explain the scope of cryptography and the cryptographic functions excluded from the controls, including defining 'in excess of 56 bits of symmetric key length, or equivalent;' and the introduction of a definition for ''authentication.''

In addition, several revisions are made to Note 2 to 5A002.a (formerly Note to 5A002.a). Some paragraph and wording changes are made to the Note to correspond to other changes in the control text; the introductory text of the Note is revised to clarify that the Note also applies to ''specially designed'' ''information security'' components of items released by the Note; paragraph (f) of the Note is amended to clarify that it applies to any item where the encryption is limited to wireless personal area network functionality; paragraph (g) of the Note regarding dormant encryption products is removed and replaced with the positive phrase ''where that cryptographic capability is usable without ''cryptographic activation'' '' in the introductory text of 5A002.a; and the remaining paragraphs of the Note are moved up, so that former paragraphs in the Note (h), (i), and (j) are now (g), (h), and (i).

*5A003 ''Systems,'' ''Equipment'' and ''Components,'' for Non-Cryptographic ''Information Security''*

ECCN 5A003 is amended by revising the Note to Items paragraph .a in the List of Items Controlled section to add a clarification of the term 'physical layer security' and to provide a reference to ISO/IEC 7498–1.

*5D002 ''Software''*

5D002 is amended by revising the EI controls in the License Requirements table to exclude subparagraphs pertaining to ECCN 5A003, which is not EI controlled. The Items paragraph in the List of Items Controlled section is amended by replacing 5D002.b, which no longer controls anything, with ''cryptographic activation'' from 5D002.d, so that it has the same paragraph number as the equivalent controls in ECCNs 5A002 and 5E002. Paragraph 5D002.c.2 is replaced, because it no longer controls anything, and new control text is added corresponding to ECCN 5A003. Items paragraphs 5D002.a and .c are cascaded in order to create separate subparagraphs a.1, a.2, a.3 and c.1, c.2 and c.3 corresponding to ECCNs 5A002, 5A003, and 5A004.

*5E002 ''Technology''*

ECCN 5E002 is corrected to correspond to the WA list by revising the text in Items paragraph 5E002.b.

**Category 6—Sensors and Lasers**

*6A00 Acoustic Systems, Equipment and ''Components''*

ECCN 6A001 is amended by adding a hyphen to the word ''real-time'' in two places in the LVS paragraph in the List Based License Exceptions section; in the List of Items Controlled section, by adding double quotes around the word ''accuracy'' in Items paragraphs a.1.a.1.d and a.1.a.2.b.4; by adding a hyphen to the word ''user-accessible'' in Items paragraph a.2.c; by adding a Nota Bene to Items paragraph a.2.d.2 to reference 7A003.c for inertial heading systems; and by adding a hyphen to the word ''user-accessible programmability'' in items paragraph a.2.f. The majority of these revisions are editorial in nature (*e.g.,* adding quotes or hyphens).

*6A003 Cameras, Systems or Equipment, and ''Components'' Therefor*

ECCN 6A003 is amended by correcting paragraph b.1 in Note 3 to Items paragraph b.4.b in the List of Items Controlled section to remove the word ''pixel'' from the units, so that the unit simply reads milli-radians or mrad;

this correction does not change the scope of this decontrol note.

*6A005 ''Lasers,'' ''Components'' and Optical Equipment*

The List of Items Controlled section of ECCN 6A005 is amended by revising Items paragraph a.6.a to raise the output power from 200 W to 500 W for non-tunable continuous wave lasers, as well as by removing ''or'' in Items paragraph a.7.b because this paragraph is not the last paragraph before the end of the series in Items paragraph .a. This rule adds an upper limit ''not exceeding 1,850 nm'' to Items paragraph a.8. This rule also adds two new Items paragraphs a.9 and a.10 to add two new output wavelength ranges for non-tunable continuous wave (CW) lasers (exceeding 1,850 nm − 2,100 nm, including output power parameters for single and multiple transverse mode lasers) and (exceeding 2,100 nm and output power exceeding 1W). In addition, this rule corrects Items paragraph b.7.b.3 (non-tunable pulsed lasers) by removing ''or'' because this paragraph is not the last paragraph before the end of the series in Items paragraph b. Items paragraph b.8 is revised to add an upper threshold of ''not exceeding 1,850 nm.'' This rule adds two new output wavelength ranges for non-tunable pulsed lasers by adding Items paragraph b.9 (exceeding 1,850 nm but not exceeding 2,100 nm) and b.10 (exceeding 2,100 nm). These changes represent a decontrol of items in 6A005 and are estimated to result in a decrease of 30 license application submissions annually.

*6A008 Radar Systems, Equipment and Assemblies*

ECCN 6A008 is amended to harmonize with the WA list by removing Related Controls Note (1) and redesignating Notes (2) and (3) as (1) and (2), because Note (1) deviated from the WA exclusion Note that already exists in ECCN 6A008, which resulted in confusion.

*6D003 Other ''Software''*

ECCN 6D003 is corrected by adding a hyphen to the term ''real time processing'' so that it reads ''real-time processing'' in Items paragraphs a.1 through a.4, a.5.a, f.3, and f.4.

*6E003 Other ''Technology''*

ECCN 6E003 is amended by rewriting Items paragraph d.1 and d.2 in the List of Items Controlled section to clarify the scope and use of the words ''technology'' and ''required.''

**Category 7—Navigation and Avionics**

*7D003 Other ''Software'' and 7E001 ''Technology''*

This rule corrects the capitalization in the Heading of 7E001. The Related Controls paragraphs of ECCNs 7D003 and 7E001 are amended by removing references to ECCNs 0D521 and 0E521, because software and technology for fly-by-wire controls systems were removed from 0D521 and 0E521 (*see* 80 FR 29452, May 21, 2015). Items paragraph 7D003.e is amended by revising one Items paragraph reference and adding two additional references to correspond to revisions made by this rule to ECCN 7E004.

*7D004 ''Source Code'' Incorporating ''Development'' ''Technology'' Specified*

The heading of 7D004 is amended by revising the reference to Items paragraphs in 7E004 to correspond to revisions this rule makes to ECCN 7E004.

*7E003 ''Technology'' According to the General Technology Note for the Repair, Refurbishing or Overhaul of Equipment Controlled by 7A001 to 7A004*

The Related Controls paragraph of ECCN 7E003 is amended by revising the phrase ''maintenance technology'' to read ''technology for maintenance'' to clarify the scope of the decontrol text.

*7E004 Other ''Technology''*

ECCN 7E004 is amended to clarify the scope of control by removing the word ''development'' and capitalizing the word ''Technology'' in paragraphs 1 and 2 of the Note to Items paragraph b.5 in the List of Items Controlled section, because the term ''development'' is already in the definition of ''technology'' and does not need to be used again.

**Category 8—Marine**

*8A002 Marine Systems, Equipment, ''Parts'' and ''Components''*

ECCN 8A002 is amended by adding double quotes around the word ''fuel cell'' in the introductory text of Items paragraph j.3 in the List of Items Controlled section to indicate that it is a defined term in part 772 of the EAR.

*8C001 'Syntactic Foam' Designed for Underwater Use*

ECCN 8C001 is amended by adding double quotes around the word ''matrix'' in the Related Definitions paragraph of the List of Items Controlled section to indicate that it is a defined term in part 772 of the EAR.

**Category 9—Aerospace and Propulsion**

*9A001 Aero Gas Turbine Engines*

ECCN 9A001 is amended by adding double quotes around the word ''technologies'' in Items paragraph 9A001.a in the List of Items section to indicate that this is a defined term in part 772 of the EAR.

*9A004 Space Launch Vehicles and ''Spacecraft,'' ''Spacecraft Buses,'' ''Spacecraft Payloads,'' ''Spacecraft'' On-Board Systems or Equipment, and Terrestrial Equipment*

ECCN 9A004 is amended by removing the comma after the word ''equipment'' and adding a comma after the word ''spacecraft'' in the introductory text of Items paragraph .f in the List of Items Controlled section to correct the punctuation and clarify the scope of the paragraph (*i.e.,* to clarify that a list of controlled terrestrial equipment is what follows Items paragraph .f and not a list of ''specially designed'' spacecraft).

*9A515 ''Spacecraft'' and Related Commodities*

ECCN 9A515 is amended by revising the Related Controls paragraph in the List of Items Controlled section to capitalize ''Microwave Monolithic Integrated Circuits'' and add quotes around the term and its acronym, ''MMICs,'' in order to correspond to the WA drafting guidelines and indicate that the term is defined in part 772 of the EAR. This rule also implements an amendment that is not a result of changes made to the WA list by revising paragraph .a to clarify that only the International Space Station and the James Webb Space Telescope, and ''specially designed'' ''parts,'' ''components,'' ''accessories'' and ''attachments'' for those platforms are excluded from 9A515.a. Specifically, the reference to ECCN 9A004 now reads ECCN 9A004.u or .w.

*9B002 On-Line (Real Time) Control Systems, Instrumentation (Including Sensors) or Automated Data Acquisition and Processing Equipment*

Items paragraph 9B002.b is amended by replacing the phrase ''incorporating technologies'' with ''incorporating any of the technology'' to clarify the scope of the control paragraph.

*9B009 Tooling ''Specially Designed'' for Producing Turbine Engine Powder Metallurgy Rotor ''Parts'' or ''Components''*

The Heading of ECCN 9B009 is amended by moving the control parameter from the Heading to the Items paragraph, as well as adding the word

''gas'' before ''turbine engine'' to add specificity to the control. This rule also replaces the phrase ''capable of operating at'' with ''designed to operate at'' to control the intended capability of the item versus the actual capability, as the actual capability may vary from item to item in the same production line, which complicates classification of a product against specific parameters. In addition, a new parameter, ''designed to operate at a temperature of 873 K (600 °C) or more,'' is added, as well as a new exclusion Note for tooling for the production of powder. Normally, more specific parameters would narrow the scope of the control and result in a decrease of license application submissions, but BIS received only one application for this entry last year. BIS estimates there will be no change in the number of license application submissions as a result of this revision.

*9E003 Other ''Technology''*

ECCN 9E003 is amended by adding a Technical Note to Items paragraph a.1 in the List of Items Controlled section to indicate that stress-rupture life testing is typically conducted on a test specimen. Items paragraph 9E003.a.2.a (thermally decoupled liners for combustors) is revised by adding single quotes around the term 'thermally decoupled liners' and adding a Technical Note to provide a definition for the term. To accommodate the new Technical Note, the rule redesignates the existing Technical Note as Technical Note 2 and adds the new Technical Note as Technical Note 1. The Note to Items paragraph i.3 is revised by removing the terms ''development'' and ''production,'' because these terms are already in the definition of ''technology,'' and there is no need to be redundant when stating the scope of the exclusion note.

**Part 772—Definitions of Terms as Used in the Export Administration Regulations (EAR)**

Section 772.1 is amended by adding the terms ''authentication'' (see explanation above under ECCN 5A002), ''MMIC'' and ''Monolithic Microwave Integrated Circuit'' (see explanation above under ECCN 3A001). This rule also adds quotes around the term ''aircraft'' in the definitions of ''fly-by-light system'' and ''fly-by-wire system,'' because the use of ''aircraft'' in this definition pertains to the term ''aircraft,'' which is defined in part 772 of the EAR. The term ''real-time bandwidth'' is revised to add a hyphen between words ''real'' and ''time,'' and a comma and a phrase in the definition are moved to clarify the definition. The Category 7 reference is removed from the term ''real-time processing,'' because this term is no longer used in this category of the CCL. The term ''stability'' is revised by adding a Statement of Understanding that provides guidance on how to estimate ''stability'' for gyroscopes. The term ''three dimensional integrated circuit'' is revised, because 3D and 2.5D integrated circuit technologies allow the integration of many different types of integrated circuits, and not all 3D Integrated circuits are composed solely of semiconductor die sandwiched together. Also, a description is added for the term ''interposer,'' which is now used in the definition of ''three dimensional integrated circuit.'' This rule also revises the category reference for the following terms: Active pixel, aircraft, fibrous or filamentary materials, frequency hopping, and spacecraft.

**Supplement No. 6 to Part 774 ''Sensitive List''**

Supplement No. 6 to part 774 ''Sensitive List'' (SL) is amended by removing reference to 1C007.d in paragraphs (iii), (vi) and (vii) of Category 1, because this paragraph was moved to 1C007.c.2, and 1C007.c is already listed. Supplement No. 6 to part 774 (SL) is also amended by revising the parameters in paragraphs (4)(ii) and (iii) to match the revisions to APP in ECCNs 4D001 and 4E001, and adding a hyphen in the term ''user-accessible programmability'' in paragraphs (6)(v) and (viii). In Category 6 of the SL, this rule adds double quotes around the term ''magnetic gradiometers'' in paragraph (xxiv)(C) and around the word ''magnetometers'' in paragraph (xxv), in order to indicate that these words are defined in part 772 of the EAR. Paragraph (9)(viii) is removed and reserved, because 9E003.a.1 is moving to paragraph (9)(ix). Paragraph 9E003.h is moved to its own SL paragraph, (9)(x).

The following is a change to the EAR related to the WA 2016 agreements.

**Section 740.7 ''License Exception APP''**

Consistent with Executive Order 13742 of October 7, 2016, which terminated the national emergency with respect to the actions and policies of the Government of Burma (Burma) and revoked several Burma-related Executive Orders in recognition of Burma's substantial advances to promote democracy (including historic elections held in November 2015 that resulted in the formation of a democratically elected, civilian-led government), this rule moves Burma from paragraph (d)(1) ''Computer Tier 3'' to paragraph (c)(1) ''Computer Tier 1.'' As provided in subsection 1211(e) of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85, November 18, 1997, 111 Stat. 1629, 1932–1933, as amended; 50 U.S.C. 4604 note), this revision shall not take effect until 120 days after the President submits to the Congress a report setting forth the justification. On July 27, 2017 the Secretary of Commerce, as the President's delegate, submitted to Congress a report that provided justification for the movement of Burma from Computer Tier 3 to Tier 1. Therefore, this revision will become effective on November 24, 2017.

**Export Administration Act**

Although the Export Administration Act of 1979, as amended, expired on August 21, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

**Saving Clause**

Shipments of items removed from license exception eligibility or eligibility for export, reexport or transfer (in-country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on August 15, 2017, pursuant to actual orders for exports, reexports and transfers (in-country) to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exports, reexports and transfers (in-country) before October 16, 2017. Any such items not actually exported, reexported and transferred (in-country) before midnight, on October 16, 2017, require a license in accordance with this final rule.

**Executive Order Requirements**

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been designated a ''significant regulatory action,'' under Executive Order 12866. The Wassenaar Arrangement (WA) has been established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations. The aim is also to prevent the acquisition of these items by terrorists. There are presently 41 Participating States, including the United States, that seek through their national policies to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities that undermine these goals, and to ensure that these items are not diverted to support such military capabilities that undermine these goals. Implementation of the WA agreements in a timely manner enhances the national security of the United States and global international trade.

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

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

**Paperwork Reduction Act Requirements**

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves the following OMB approved collections of information subject to the PRA: 0694–0088, ''Multi-Purpose Application,'' and carries a burden hour estimate of 29.6 minutes for a manual or electronic submission; 0694–0106, ''Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,'' which carries a burden hour estimate of 21 minutes for a manual or electronic submission; 0694–0137 ''License Exceptions and Exclusions,'' which carries a burden hour estimate average of 1.5 hours per submission (**Note:** submissions for License Exceptions are rarely required); 0694–0096 ''Five Year Records Retention Period,'' which carries a burden hour estimate of less than 1 minute; and 0607–0152 ''Automated Export System (AES) Program, which carries a burden hour estimate of 3 minutes per electronic submission. Below is a table that estimates there will be a decrease in the number of license application submissions BIS receives per year as a result of the revisions in this rule. A decrease in license application submissions in turn results in a decrease in Wassenaar reporting and recordkeeping, the use of license exceptions, and the 5-year records retention burden, but does not relieve the burden to file export information in the Automated Export System. Specific license application submission estimates are discussed further in the preamble of this rule where the revision is explained. BIS estimates that revisions that are editorial, moving the location of control text on the Commerce Control List, or clarifications will result in no change in license application submissions. The estimated annual cost savings for both application submitters and the U.S. Government is $3,547.60, and the estimated annual burden hour decrease is 34.8 hours.

| Description | Total submissions | Total mins for submission (29.6 min) | Cost for respondents ($30/hr or $2/min) | Total min to process application (45 min) | Cost for gov't ($40/hr or $1.5/min) |
|---|---|---|---|---|---|
| 1C007.c titanium diboride | 0 | 0 | 0 | 0 | 0. |
| 1C007.d ceramic composite material | 2 | 59.2 | $118.40 | 90 | $135.00. |
| 1C007.e precursors | 0 | 0 | 0 | 0 | 0. |
| 3A001.a.14 integrated circuits | 50 | 1480 | $2,960.00 | 2250 | $3375.00. |
| 3A001.b.1 vacuum electric devices | 10 | 296 | $592.00 | 450 | $675.00. |
| 3A001.b.11 frequency synthesizers | (30) | (888) | ($1776.00) | (1350) | ($2025.00). |
| 3A001.f ''specially . . . designed'' encoder rings, discs or scales. | 5 | 148 | $296.00 | 225 | $337.50. |
| 3A002.c.4.b frequency mask trigger | 15 | 444 | $888.00 | 675 | $1012.50. |
| 3B001.a.1 equipment designed for epitaxial growth. | (20) | (592) | ($1184.00) | (900) | ($1350.00). |
| 3C001.d non-sensitive p-type epitaxial layer materials. | (5) | (148) | ($296.00) | (225) | ($337.50). |
| 4A003.b computers | 0 | 0 | 0 | 0 | 0. |
| 4D001 and 4E001 technology and software for computers. | 0 | 0 | 0 | 0 | 0. |
| 5A001.b.6 'voice coding' | 0 | 0 | 0 | 0 | 0. |
| 5B001 telecom materials | (5) | (148) | ($296.00) | (225) | ($337.50). |
| 5E001.c.1 telecom technology | (5) | (148) | ($296.00) | (225) | ($337.50). |
| 5E001.c.2.c telecom technology | (15) | (444) | ($888.00) | (675) | ($1012.50). |
| 6A005 lasers | (30) | (888) | ($1776.00) | (1350) | ($2025.00). |
| 9B009 Tooling ''specially designed'' for producing turbine engine powder metallurgy rotor ''parts'' or ''components. | 0 | 0 | 0 | 0 | 0. |
| Totals | (28 fewer submissions annually). | (828.8 fewer burden minutes for submitters annually). | ($1657.60 decrease of cost burden to submitters annually). | (1260 fewer burden minutes for USG annually). | ($1890.00 decrease of cost burden to USG annually). |

Any comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, may be sent to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov*, or by fax to (202) 395–7285.

**Administrative Procedure Act and Regulatory Flexibility Act Requirements**

The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this action involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international commitments to the WA. The WA is committed to contributing to regional and international security and stability by promoting responsibility and transparency in the global arms trade, and preventing destabilizing accumulations of arms. As a Participating State, the United States is charged with implementing the agreed list changes as soon as possible after approval. Because the United States is a significant exporter of the list items discussed in this rule, implementation of this provision is necessary for the WA to achieve its purpose, and will enhance the national security of the United States and global international trade.

Although the APA requirements in section 553 are not applicable to this action under the provisions of paragraph (a)(1), this action also falls within two other exceptions in the section. The subsection (b) requirement that agencies publish a notice of proposed rulemaking that includes information on the public proceedings does not apply when an agency for good cause finds that the notice and public procedures are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates the finding (and reasons therefor) in the rule that is issued (5 U.S.C. 553(b)(B)). In addition, the section 553(d) requirement that publication of a rule shall be made not less than 30 days before its effective date can be waived if an agency finds there is good cause to do so.

The section 553 requirements for notice and public procedures and for a delay in the date of effectiveness do not apply to this rule, as there is good cause to waive such practices. Delay in implementation would disrupt the movement of these potential national-security controlled items globally, creating disharmony between export control measures implemented by the 41 WA Participating States. Export controls work best when all countries implement the same export controls in a timely manner. Delaying this rulemaking would prevent the United States from fulfilling its commitment to the WA in a timely manner, would injure the credibility of the United States in this and other multilateral regimes, and may impair the international community's ability to effectively control the export of national security controlled items. Therefore, this regulation is issued in final form, and is effective August 15, 2017.

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

**List of Subjects**

*15 CFR Part 740*

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

*15 CFR Part 772*

Exports.

*15 CFR Part 774*

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 740, 772, and 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

## PART 740—[AMENDED]

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

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

■ 2. Section 740.7 is amended by:

■ a. Adding ''Burma,'' to paragraph (c)(1) after ''Burkina Faso,'' ; and

■ b. Removing ''Burma,'' from paragraph (d)(1).

## PART 772—[AMENDED]

■ 3. The authority citation for part 772 continues to read as follows:

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

■ 4. Section 772.1 is amended by:

■ a. Removing ''(Cat 6 and 8)'' and adding in its place ''(Cat 6)'' in the definition of ''active pixel'';

■ b. Removing ''(Cat 1, 7, and 9)'' and adding in its place ''(Cat 1, 6, 7, and 9)'' in the definition of ''aircraft'';

■ c. Adding the definition of ''Authentication'' in alphabetical order;

■ d. Removing ''(Cat 1 and 8)'' and adding in its place ''(Cat 1, 2, 8 and 9)'' in

■ the definition of ''fibrous or filamentary materials'';

■ e. Adding quotes around the term ''aircraft'' in the definitions of the terms ''fly-by-light system'' and ''fly-by-wire system'';

■ f. Removing ''(Cat 5 part 1 and 5 part 2)'' and adding in its place ''(Cat 5P1, 5P2 and 6)'' in the definition of ''frequency hopping'';

■ g. Adding the definitions of ''MMIC'' and ''Monolithic Microwave Integrated Circuit'' in alphabetical order;

■ h. Removing the definition of ''multilevel security'' including the Note;

■ i. Revising the definitions of ''real-time bandwidth'' and ''real-time processing'';

■ j. Remove ''(Cat 7 and 9)'' and add in its place ''(Cat 9)'' in the definition of ''spacecraft''; and

■ k. Revising the definitions of ''stability'' and ''three dimensional integrated circuit''.

The additions and revisions read as follows:

**772.1 Definitions of terms as used in the Export Administration Regulations (EAR).**

* * * * *

''*Authentication*''. (Cat 5P2) Verifying the identity of a user, process or device, often as a prerequisite to allowing access to resources in an information system. This includes verifying the origin or content of a message or other information, and all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

* * * * *

''*MMIC*''. (Cat 3 and 5) See ''Monolithic Microwave Integrated Circuit''

* * * * *

''*Monolithic Microwave Integrated Circuit*'' (''*MMIC*'') (Cat 3, 5P1 and 9) is a ''monolithic integrated circuit'' that operates at microwave or millimeter wave frequencies.

* * * * *

*Real-time bandwidth.* (Cat 3) For ''signal analyzers'', the widest frequency range for which the analyzer can continuously transform time domain data entirely into frequency-domain results using Fourier or other discrete time transform that processes every incoming time point, without a reduction of measured amplitude of more than 3 dB below the actual signal amplitude caused by gaps or windowing effects, while outputting or displaying the transformed data.

''*Real-time Processing*''. (Cat 2, 4, and 6) The processing of data by a computer system providing a required level of service, as a function of available resources, within a guaranteed response time, regardless of the load of the system, when stimulated by an external event.

* * * * *

''*Stability*''. (Cat 7) Standard deviation (1 sigma) of the variation of a particular parameter from its calibrated value measured under stable temperature conditions. This can be expressed as a function of time.

**Note to the Defintion of ''Stability'':** For gyroscopes, ''stability'' can be estimated by determining the Allan variance noise-analysis value at the integration period (*i.e.,* sample time) consistent with the stated measurement period, which may include extrapolating the Allan variance noise analysis beyond the instability point into the rate random walk or rate ramp regions to an integration period consistent with the stated measurement period (Reference: IEEE Std. 952–1997 [R2008]). Allan variance noise analysis is often used to characterize Micro Electro Mechanical Systems (MEMS) gyroscopes, and is applicable to other gyroscopes, such as Ring Laser Gyroscopes (RLGs) and Fiber Optic Gyroscopes (FOGs).

* * * * *

''*Three dimensional integrated circuit*''. (Cat 3) A collection of semiconductor dies or active device layers, integrated together, and having through semiconductor via connections passing completely through an interposer, substrate, die or layer to establish interconnections between the device layers. An interposer is an interface that enables electrical connections.

* * * * *

## PART 774—[AMENDED]

■ 5. The authority citation for part 774 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 6. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1A004 is revised to read as follows:

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

* * * * *

**1A004 Protective and detection equipment and ''components,'' not ''specially designed'' for military use, as follows (see List of Items Controlled).**

*Reason for Control:* NS, CB, RS, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| CB applies to chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a. | CB Column 2 |
| RS apply to 1A004.d ..... | RS Column 2 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* N/A
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* (1) See ECCNs 1A995, 2B351, and 2B352. (2) See ECCN 1D003 for ''software'' ''specially designed'' or modified to enable equipment to perform the functions of equipment controlled under section 1A004.c (Nuclear, biological and chemical (NBC) detection systems). (3) See ECCN 1E002.g for control libraries (parametric technical databases) ''specially designed'' or modified to enable equipment to perform the functions of equipment controlled under 1A004.c (Nuclear, biological and chemical (NBC) detection systems). (4) Chemical and biological protective and detection equipment specifically designed, developed, modified, configured, or adapted for military applications is ''subject to the ITAR'' (see 22 CFR parts 120 through 130, including USML Category XIV(f)), as is commercial equipment that incorporates ''parts'' or ''components'' controlled under that category except for domestic preparedness devices for individual protection that integrate ''components'' and ''parts'' identified in USML Category XIV(f)(4) when such ''parts'' or ''components'' are: (i) Integral to the device; (ii) inseparable from the device; and (iii) incapable of replacement without compromising the effectiveness of the device, in which case the equipment is ''subject to the EAR'' under ECCN 1A004. (5) This entry does not control radionuclides incorporated in equipment listed in this entry—such materials are subject to the licensing jurisdiction of the Nuclear Regulatory Commission (See 10 CFR part 110).

*Related Definitions:* (1) 'Biological agents' means: Pathogens or toxins, selected or modified (such as altering purity, shelf life, virulence, dissemination characteristics, or resistance to UV radiation) to produce casualties in humans or animals, degrade equipment or damage crops or the environment. (2) 'Riot control agents' are substances which, under the expected conditions of use for riot control purposes, produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure. (Tear gases are a subset of 'riot control agents.')

*Items:*

a. Full face masks, filter canisters and decontamination equipment therefor, designed or modified for defense against any of the following, and ''specially designed'' ''components'' therefor:

**Note:** 1A004.a includes Powered Air Purifying Respirators (PAPR) that are designed or modified for defense against agents or materials, listed in 1A004.a.

**Technical Notes:** For the purpose of 1A004.a:

1. Full face masks are also known as gas masks.

2. Filter canisters include filter cartridges.

a.1. 'Biological agents;'

a.2. 'Radioactive materials;'

a.3. Chemical warfare (CW) agents; *or*

a.4. 'Riot control agents,' as follows:

a..4.a. α-Bromobenzeneacetonitrile, (Bromobenzyl cyanide) (CA) (CAS 5798–79–8);

a..4.b. [(2-chlorophenyl) methylene] propanedinitrile, (o-Chlorobenzylidenemalononitrile) (CS) (CAS 2698–41–1);

a..4.c. 2-Chloro-1-phenylethanone, Phenylacyl chloride (ω-chloroacetophenone) (CN) (CAS 532–27–4);

a..4.d. Dibenz-(b,f)-1,4-oxazephine, (CR) (CAS 257–07–8);

a..4.e. 10-Chloro-5, 10-dihydrophenarsazine, (Phenarsazine chloride), (Adamsite), (DM) (CAS 578–94–9);

a..4.f. N-Nonanoylmorpholine, (MPA) (CAS 5299–64–9);

b. Protective suits, gloves and shoes, ''specially designed'' or modified for defense against any of the following:

b.1. 'Biological agents';

b.2. 'Radioactive materials;' *or*

b.3. Chemical warfare (CW) agents;

c. Detection systems, ''specially designed'' or modified for detection or identification of any of the following, and ''specially designed'' ''components'' therefor:

c.1. 'Biological agents';
c.2. 'Radioactive materials;' *or*
c.3. Chemical warfare (CW) agents;
d. Electronic equipment designed for automatically detecting or identifying the presence of ''explosives'' (as listed in the annex at the end of Category 1) residues and utilizing 'trace detection' techniques (*e.g.,* surface acoustic wave, ion mobility spectrometry, differential mobility spectrometry, mass spectrometry).

**Technical Note:** 'Trace detection' is defined as the capability to detect less than 1 ppm vapor, or 1 mg solid or liquid.

**Note 1:** 1A004.d. does not apply to equipment ''specially designed'' for laboratory use.

**Note 2:** 1A004.d. does not apply to non-contact walk-through security portals.

**Note:** 1A004 does not control:
a. Personal radiation monitoring dosimeters;
b. Occupational health or safety equipment limited by design or function to protect against hazards specific to residential safety or civil industries, including:
1. Mining;
2. Quarrying;
3. Agriculture;
4. Pharmaceutical;
5. Medical;
6. Veterinary;
7. Environmental;
8. Waste management;
9. Food industry.

**Technical Notes:**
1. 1A004 includes equipment, ''components'' that have been 'identified,' successfully tested to national standards or otherwise proven effective, for the detection of or defense against 'radioactive materials' '' '' 'biological agents,' chemical warfare agents, 'simulants' or ''riot control agents,'' even if such equipment or ''components'' are used in civil industries such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or the food industry.
2. 'Simulant': A substance or material that is used in place of toxic agent (chemical or biological) in training, research, testing or evaluation.
3. For the purposes of 1A004, 'radioactive materials' are those selected or modified to increase their effectiveness in producing casualties in humans or animals, degrading equipment or damaging crops or the environment.

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1A007 is revised to read as follows:

**1A007 Equipment and devices, ''specially designed'' to initiate charges and devices containing ''energetic materials,'' by electrical means, as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, NP, AT

| *Control(s)* | *Country chart (See Supp. No.1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| NP applies to 1A007.b, as well as 1A007.a when the detonator firing set meets or exceeds the parameters of 3A229. | NP Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of all License Exceptions)**

*LVS:* N/A
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* High explosives and related equipment ''specially designed'' for military use are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). This entry does not control detonators using only primary explosives, such as lead azide. See also ECCNs 0A604, 3A229, and 3A232. See 1E001 for ''development'' and ''production'' technology controls, and 1E201 for ''use'' technology controls.
*Related Definitions:* N/A
*Items:*

a. Explosive detonator firing sets designed to drive explosive detonators specified by 1A007.b;
b. Electrically driven explosive detonators as follows:
b.1. Exploding bridge (EB);
b.2. Exploding bridge wire (EBW);
b.3. Slapper;
b.4. Exploding foil initiators (EFI).

**Technical Notes**
1. The word initiator or igniter is sometimes used in place of the word detonator.
2. For the purpose of 1A007.b the detonators of concern all utilize a small electrical conductor (bridge, bridge wire, or foil) that explosively vaporizes when a fast, high-current electrical pulse is passed through it. In nonslapper types, the exploding conductor starts a chemical detonation in a contacting high explosive material such as PETN (pentaerythritoltetranitrate). In slapper detonators, the explosive vaporization of the electrical conductor drives a flyer or slapper across a gap, and the impact of the slapper on an explosive starts a chemical detonation. The slapper in some designs is driven by magnetic force. The term exploding foil detonator may refer to either an EB or a slapper-type detonator.

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1B001 is revised to read as follows:

**1B001 Equipment for the production or inspection of ''composite'' structures or laminates controlled by 1A002 or ''fibrous or filamentary materials'' controlled by 1C010, as follows (see List of Items Controlled), and ''specially designed'' ''components'' and ''accessories'' therefor.**

**License Requirements**

*Reason for Control:* NS, MT, NP, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| MT applies to entire entry, except 1B001.d.4, e and f. | MT Column 1 |
| **Note:** *MT applies to equipment in 1B001.d that meet or exceed the parameters of 1B101.* | |
| NP applies to filament winding machines described in 1B001.a that are capable of winding cylindrical rotors having a diameter between 75 mm (3 in) and 400 mm (16 in) and lengths of 600 mm (24 in) or greater; AND coordinating and programming controls and precision mandrels for these filament winding machines. | NP Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* N/A for MT and for 1B001.a; $5,000 for all other items
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* (1) See ECCN 1D001 for software for items controlled by this entry and see ECCNs 1E001 (''development'' and ''production'') and 1E101 (''use'') for technology for items controlled by this entry. (2) Also see ECCNs 1B101 and 1B201.
*Related Definitions:* N/A
Items:

a. Filament winding machines, of which the motions for positioning, wrapping and winding fibers are coordinated and programmed in three or more 'primary servo positioning' axes, ''specially designed'' for the manufacture of ''composite'' structures or laminates, from ''fibrous or filamentary materials'';
b. 'Tape laying machines', of which the motions for positioning and laying tape are coordinated and programmed in five or more 'primary servo positioning' axes, ''specially designed'' for the manufacture of ''composite'' airframe or missile structures;

**Technical Note:** For the purposes of 1B001.b, 'tape-laying machines' have the ability to lay one or more 'filament bands' limited to widths greater than 25.4 mm and less than or equal to 304.8 mm, and to cut

and restart individual 'filament band' courses during the laying process.

c. Multidirectional, multidimensional weaving machines or interlacing machines, including adapters and modification kits, ''specially designed'' or modified for weaving, interlacing or braiding fibers for ''composite'' structures;

**Technical Note:** For the purposes of 1B001.c the technique of interlacing includes knitting.

d. Equipment ''specially designed'' or adapted for the production of reinforcement fibers, as follows:

d.1. Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, pitch or polycarbosilane) into carbon fibers or silicon carbide fibers, including special equipment to strain the fiber during heating;

d.2. Equipment for the chemical vapor deposition of elements or compounds, on heated filamentary substrates, to manufacture silicon carbide fibers;

d.3. Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide);

d.4. Equipment for converting aluminum containing precursor fibers into alumina fibers by heat treatment;

e. Equipment for producing prepregs controlled by 1C010.e by the hot melt method;

f. Non-destructive inspection equipment ''specially designed'' for ''composite'' materials, as follows:

f.1. X-ray tomography systems for three dimensional defect inspection;

f.2. Numerically controlled ultrasonic testing machines of which the motions for positioning transmitters or receivers are simultaneously coordinated and programmed in four or more axes to follow the three dimensional contours of the ''part'' or ''component'' under inspection;

g. Tow-placement machines, of which the motions for positioning and laying tows are coordinated and programmed in two or more 'primary servo positioning' axes, ''specially designed'' for the manufacture of ''composite'' airframe or missile structures.

**Technical Note to 1B001.g:** For the purposes of 1B001.g, 'tow-placement machines' have the ability to place one or more 'filament bands' having widths less than or equal to 25.4 mm, and to cut and restart individual 'filament band' courses during the placement process.

**Technical Notes for 1B001:** 1. For the purpose of 1B001, 'primary servo positioning' axes control, under computer program direction, the position of the end effector (i.e., head) in space relative to the work piece at the correct orientation and direction to achieve the desired process.

2. For the purposes of 1B001, a 'filament band' is a single continuous width of fully or partially resin-impregnated tape, tow or fiber. Fully or partially resin-impregnated 'filament bands' include those coated with dry powder that tacks upon heating.

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1C007 is revised to read as follows:

**1C007 Ceramic powders, ceramic-''matrix'' ''composite'' materials and 'precursor materials,' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, MT, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| MT applies to items in 1C007.c when the dielectric constant is less than 6 at any frequency from 100 MHz to 100 GHz for use in ''missile'' radomes. | MT Column 1 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $5000, except N/A for MT and for 1C007.e
*GBS:* N/A
*CIV:* N/A

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship any item in 1C007.c entry to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* See also 1C107.
*Related Definitions:* N/A
*Items:*

a. Ceramic powders of titanium diboride (TiB2) (CAS 12045–63–5) having total metallic impurities, excluding intentional additions, of less than 5,000 ppm, an average particle size equal to or less than 5 μm and no more than 10% of the particles larger than 10 μm;

b. [Reserved]

c. Ceramic-''matrix'' ''composite'' materials as follows:

c.1. Ceramic-ceramic ''composite'' materials with a glass or oxide-''matrix'' and reinforced with any of the following:

c.1.a. Continuous fibers made from any of the following materials:

c.1.a.1. $Al_2O_3$ (CAS 1344–28–1); *or*

c.1.a.2. Si-C-N; *or*

**Note:** 1C007.c.1.a does not apply to ''composites'' containing fibers with a tensile strength of less than 700 MPa at 1,273 K (1,000 °C) or tensile creep resistance of more than 1% creep strain at 100 MPa load and 1,273 K (1,000 °C) for 100 hours.

c.1.b. Fibers being all of the following:

c.1.b.1. Made from any of the following materials:

c.1.b.1.a. Si-N;

c.1.b.1.b. Si-C;

c.1.b.1.c. Si-Al-O-N; *or*

c.1.b.1.d. Si-O-N; *and*

c.1.b.2. Having a ''specific tensile strength'' exceeding $12.7 \times 10^3$ m;

c.2. Ceramic- ''matrix'' ''composite'' materials with a ''matrix'' formed of carbides or nitrides of silicon, zirconium or boron;

*N.B.: For items previously listed under 1C007.c see 1C007.c.1.b.*

d. [Reserved]

*N.B.: For items previously listed under 1C007.d see 1C007.c.2.*

e. 'Precursor materials' ''specially designed'' for the ''production'' of materials controlled by 1C007.c, as follows:

e.1. Polydiorganosilanes;

e.2. Polysilazanes;

e.3. Polycarbosilazanes;

**Technical Note:** For the purposes of 1C007, 'precursor materials' are special purpose polymeric or metallo-organic materials used for the ''production'' of silicon carbide, silicon nitride, or ceramics with silicon, carbon and nitrogen.

f. [Reserved]

*N.B.: For items previously listed under 1C007.f see 1C007.c.1.a.*

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1, ECCN 1C608 is revised to read as follows:

**1C608 ''Energetic materials'' and related commodities (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, MT, AT, UN

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| RS applies to entire entry. | RS Column 1 |
| MT applies to 1C608.m | MT Column 1 |
| AT applies to entire entry. | AT Column 1 |
| UN applies to entire entry. | See § 746.1(b) for UN controls |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $1500
*GBS:* N/A
*CIV:* N/A

**Special Conditions for STA**

*STA:* Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1C608.

**List of Items Controlled**

*Related Controls:* (1) The EAR does not control devices or charges containing materials controlled by USML subparagraphs V(c)(6), V(h), or V(i). The USML controls devices containing such materials. (2) The USML in Categories III, IV, or V controls devices and charges in

this entry if they contain materials controlled by Category V (other than slurries) and such materials can be easily extracted without destroying the device or charge. (3) See also explosives and other items enumerated in ECCNs 1A006, 1A007, 1A008, 1C011, 1C111, 1C239, and 1C992. (4) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of US-origin ''600 series'' controlled content.

*Related Definitions:* (1) For purposes of this entry, the term 'controlled materials' means controlled energetic materials enumerated in ECCNs 1C011, 1C111, 1C239, 1C608, or USML Category V. (2) For the purposes of this entry, the term 'propellants' means substances or mixtures that react chemically to produce large volumes of hot gases at controlled rates to perform mechanical work.

*Items:*

a. 'Single base,' 'double base,' and 'triple base' 'propellants' having nitrocellulose with nitrogen content greater than 12.6% in the form of either:

a.1. 'Sheetstock' or 'carpet rolls;' or

a.2. Grains with diameter greater than 0.10 inches.

**Note:** This entry does not control 'propellant' grains used in shotgun shells, small arms cartridges, or rifle cartridges.

**Technical Notes:** 1. 'Sheetstock' is 'propellant' that has been manufactured in the form of a sheet suitable for further processing.

2. A 'carpet roll' is 'propellant' that has been manufactured as a sheet, often cut to a desired width, and subsequently rolled up (like a carpet).

3. 'Single base' is 'propellant' which consists mostly of nitrocellulose.

4. 'Double base' 'propellant' consist mostly of nitrocellulose and nitroglycerine.

5. 'Triple base' consists mostly of nitrocellulose, nitroglycerine, and nitroguanidine. Such 'propellants' contain other materials, such as resins or stabilizers, that could include carbon, salts, burn rate modifiers, nitrodiphenylamine, wax, polyethylene glycol (PEG), polyglycol adipate (PGA).

b. Shock tubes containing greater than 0.064 kg per meter (300 grains per foot), but not more than 0.1 kg per meter (470 grains per foot) of 'controlled materials.'

c. Cartridge power devices containing greater than 0.70 kg, but not more than 1.0 kg of 'controlled materials.'

d. Detonators (electric or nonelectric) and ''specially designed'' assemblies therefor containing greater than 0.01 kg, but not more than 0.1 kg of 'controlled materials.'

e. Igniters not controlled by USML Categories III or IV that contain greater than 0.01 kg, but not more than 0.1 kg of 'controlled materials.'

f. Oil well cartridges containing greater than 0.015 kg, but not more than 0.1 kg of 'controlled materials.'

g. Commercial cast or pressed boosters containing greater than 1.0 kg, but not more than 5.0 kg of 'controlled materials.'

h. Commercial prefabricated slurries and emulsions containing greater than 10 kg and less than or equal to thirty-five percent by weight of USML 'controlled materials.'

i. [Reserved]

j. ''Pyrotechnic'' devices ''specially designed'' for commercial purposes (*e.g.,* theatrical stages, motion picture special effects, and fireworks displays), and containing greater than 3.0 kg, but not more than 5.0 kg of 'controlled materials.'

k. Other commercial explosive devices or charges ''specially designed'' for commercial applications, not controlled by 1C608.c through .g above, containing greater than 1.0 kg, but not more than 5.0 kg of 'controlled materials.'

l. Propyleneimine (2 methylaziridine) (C.A.S. #75–55–8).

m. Any oxidizer or 'mixture' thereof that is a compound composed of fluorine and any of the following: Other halogens, oxygen, or nitrogen.

**Note 1 to 1C608.m:** Nitrogen trifluoride (NF3)(CAS 7783–54–2) in a gaseous state is controlled under ECCN 1C992 and not under ECCN 1C608.m.

**Note 2 to 1C608.m** Chlorine trifluoride (ClF3)(CAS 7790–91–2) is controlled under ECCN 1C111.a.3.f and not under ECCN 1C608.m.

**Note 3 to 1C608.m** Oxygen difluoride (OF2) is controlled under USML Category V.d.10 (see 22 CFR 121.1) and not under ECCN 1C608.m.

**Note 1 to 1C608.l and m:** If a chemical in ECCN 1C608.l or .m is incorporated into a commercial charge or device described in ECCN 1C608.c through .k or in ECCN 1C992, the classification of the commercial charge or device applies to the item.

**Technical Note to 1C608.m:** 'Mixture' refers to a composition of two or more substances with at least one substance being enumerated in 1C011, 1C111, 1C239, 1C608, USML Category V, or elsewhere on the USML.

n. Any explosives, 'propellants,' oxidizers, ''pyrotechnics,'' fuels, binders, or additives that are ''specially designed'' for military application and not enumerated or otherwise described in USML Category V or elsewhere on the USML.

■ 11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1E001 is revised to read as follows:

**1E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of items controlled by 1A002, 1A003, 1A004, 1A005, 1A006.b, 1A007, 1A008 1A101, 1B (except 1B608, 1B613 or 1B999), or 1C (except 1C355, 1C608, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C995 to 1C999).**

**License Requirements**

*Reason for Control:* NS, MT, NP, CB, RS, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to ''technology'' for items controlled by 1A002, 1A003, 1A005, 1A006.b, 1A007, 1B001 to 1B003, 1B018, 1C001 to 1C011, or 1C018. | NS Column 1 |
| NS applies to ''technology'' for items controlled by 1A004. | NS Column 2 |
| MT applies to ''technology'' for items controlled by 1A101, 1B001, 1B101, 1B102, 1B115 to 1B119, 1C001, 1C007, 1C011, 1C101, 1C102, 1C107, 1C111, 1C116, 1C117, or 1C118 for MT reasons | MT Column 1 |
| NP applies to ''technology'' for items controlled by 1A002, 1A007, 1B001, 1B101, 1B201, 1B225, 1B226, 1B228 to 1B234, 1C002, 1C010, 1C111, 1C116, 1C202, 1C210, 1C216, 1C225 to 1C237, or 1C239 to 1C241 for NP reasons | NP Column 1 |
| CB applies to ''technology'' for items controlled by 1C351, 1C353, or 1C354 | CB Column 1 |
| CB applies to ''technology'' for materials controlled by 1C350 and for chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a | CB Column 2 |
| RS applies to technology for equipment controlled in 1A004.d | RS Column 2 |
| AT applies to entire entry | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

*CIV:* N/A

*TSR:* Yes, except for the following:

(1) Items controlled for MT reasons; or (2) Exports and reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''technology'' for the ''development'' or production'' of the following:

(a) Items controlled by 1C001; or
(b) Items controlled by 1A002.a which are composite structures or laminates having an organic ''matrix'' and being made from materials listed under 1C010.c or 1C010.d.

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment and materials specified by ECCNs 1A002, 1C001, 1C007.c, 1C010.c or d or 1C012 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* (1) Also see ECCNs 1E101, 1E201, and 1E202. (2) See ECCN 1E608 for ''technology'' for items classified under ECCN 1B608 or 1C608 that, immediately prior to July 1, 2014, were classified under ECCN 1B018.a or 1C018.b through .m (note that ECCN 1E001 controls ''development'' and ''production'' ''technology'' for chlorine trifluoride controlled by ECCN 1C111.a.3.f—see ECCN 1E101 for controls on ''use'' ''technology'' for chlorine trifluoride). (3) See ECCN 1E002.g for control libraries (parametric technical databases) ''specially designed'' or modified to enable equipment to perform the functions of equipment controlled under ECCN 1A004.c (Nuclear, biological and chemical (NBC) detection systems) or ECCN 1A004.d (Equipment for detecting or identifying explosives residues). (4) ''Technology'' for lithium isotope separation (see related ECCN 1B233) and ''technology'' for items described in ECCN 1C012 are subject to the export licensing authority of the Department of Energy (see 10 CFR part 810). (5) ''Technology'' for items described in ECCN 1A102 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).
*Related Definitions:* N/A
*Items:* The list of items controlled is contained in the ECCN heading.

■ 12. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, ECCN 1E002 is revised to read as follows:

**1E002 Other ''technology'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, MT, NP, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry, except 1E002.g | NS Column 1 |
| NS applies to 1E002.g | NS Column 2 |
| MT applies to 1E002.e | MT Column 1 |
| NP applies to ''technology'' for items controlled by 1A002 for NP reasons | NP Column 1 |
| AT applies to entire entry | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* Yes, except for 1E002.e and .f.

**License Exceptions Note:** License Exception TSU is not applicable for the repair ''technology'' controlled by 1E002.e or .f, see supplement no. 2 to this part.

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship or transmit any item in 1E002.e or .f to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* See also 1E001, 1E101,1E102, 1E202, and 1E994 for ''technology'' related to 1E002.e or .f.
*Related Definitions:* N/A
*Items:*

a. ''Technology'' for the ''development'' or ''production'' of polybenzothiazoles or polybenzoxazoles;

b. ''Technology'' for the ''development'' or ''production'' of fluoroelastomer compounds containing at least one vinylether monomer;

c. ''Technology'' for the design or ''production'' of the following ceramic powders or non-''composite'' ceramic materials:

c.1. Ceramic powders having all of the following:

c.1.a. Any of the following compositions:

c.1.a.1. Single or complex oxides of zirconium and complex oxides of silicon or aluminum;

c.1.a.2. Single nitrides of boron (cubic crystalline forms);

c.1.a.3. Single or complex carbides of silicon or boron; or

c.1.a.4. Single or complex nitrides of silicon;

c.1.b. Any of the following total metallic impurities (excluding intentional additions):

c.1.b.1. Less than 1,000 ppm for single oxides or carbides; or

c.1.b.2. Less than 5,000 ppm for complex compounds or single nitrides; and

c.1.c. Being any of the following:

c.1.c.1. Zirconia (CAS 1314–23–4) with an average particle size equal to or less than 1 μm and no more than 10% of the particles larger than 5 μm; *or*

c.1.c.2. Other ceramic powders with an average particle size equal to or less than 5 μm and no more than 10% of the particles larger than 10 μm;

c.2. Non-''composite'' ceramic materials composed of the materials described in 1E002.c.1;

**Note:** 1E002.c.2 does not control ''technology'' for abrasives.

d. [Reserved]

e. ''Technology'' for the installation, maintenance or repair of materials controlled by 1C001;

f. ''Technology'' for the repair of ''composite'' structures, laminates or materials controlled by 1A002 or 1C007.c;

**Note:** 1E002.f does not control ''technology'' for the repair of ''civil aircraft'' structures using carbon ''fibrous or filamentary materials'' and epoxy resins, contained in ''aircraft'' manufacturers' manuals.

g. ''Libraries'' ''specially designed'' or modified to enable equipment to perform the functions of equipment controlled under 1A004.c or 1A004.d.

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Annex to Category 1—List of Explosives is revised to read as follows:

**ANNEX to Category 1**

**List of Explosives (See ECCNs 1A004 and 1A008)**

1. ADNBF (aminodinitrobenzofuroxan or 7-amino-4,6-dinitrobenzofurazane-1-oxide) (CAS 97096–78–1);
2. BNCP (cis-bis (5-nitrotetrazolato) tetra amine-cobalt (III) perchlorate) (CAS 117412–28–9);
3. CL–14 (diamino dinitrobenzofuroxan or 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide) (CAS 117907–74–1);
4. CL–20 (HNIW or Hexanitrohexaazaisowurtzitane) (CAS 135285–90–4); chlathrates of CL–20;
5. CP (2-(5-cyanotetrazolato) penta amine-cobalt (III) perchlorate) (CAS 70247–32–4);
6. DADE (1,1-diamino-2,2-dinitroethylene, FOX7) (CAS 145250–81–3);
7. DATB (diaminotrinitrobenzene) (CAS 1630–08–6);
8. DDFP (1,4-dinitrodifurazanopiperazine);
9. DDPO (2,6-diamino-3,5-dinitropyrazine-1-oxide, PZO) (CAS 194486–77–6);
10. DIPAM (3,3′-diamino-2,2′,4,4′,6,6′-hexanitrobiphenyl or dipicramide) (CAS 17215–44–0);
11. DNGU (DINGU or dinitroglycoluril) (CAS 55510–04–8);
12. Furazans as follows:
a. DAAOF (diaminoazoxyfurazan);
b. DAAzF (diaminoazofurazan) (CAS 78644–90–3);
13. HMX and derivatives, as follows:
a. HMX (Cyclotetramethylenetetranitramine, octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazine, 1,3,5,7-tetranitro-1,3,5,7-tetraza-cyclooctane, octogen or octogene) (CAS 2691–41–0);
b. difluoroaminated analogs of HMX;
c. K-55 (2,4,6,8-tetranitro-2,4,6,8-tetraazabicyclo [3,3,0]-octanone-3, tetranitrosemiglycouril or keto-bicyclic HMX) (CAS 130256–72–3);
14. HNAD (hexanitroadamantane) (CAS 143850–71–9);
15. HNS (hexanitrostilbene) (CAS 20062–22–0);
16. Imidazoles as follows:
a. BNNII (Octahydro-2,5-bis(nitroimino)imidazo [4,5-d]imidazole);
b. DNI (2,4-dinitroimidazole) (CAS 5213–49–0);
c. FDIA (1-fluoro-2,4-dinitroimidazole);
d. NTDNIA (N-(2-nitrotriazolo)-2,4-dinitroimidazole);

e. PTIA (1-picryl-2,4,5-trinitroimidazole);
17. NTNMH (1-(2-nitrotriazolo)-2-dinitromethylene hydrazine);
18. NTO (ONTA or 3-nitro-1,2,4-triazol-5-one) (CAS 932–64–9);
19. Polynitrocubanes with more than four nitro groups;
20. PYX (2,6-Bis(picrylamino)-3,5-dinitropyridine) (CAS 38082–89–2);
21. RDX and derivatives, as follows:
a. RDX (cyclotrimethylenetrinitramine, cyclonite, T4, hexahydro-1,3,5-trinitro-1,3,5-triazine, 1,3,5-trinitro-1,3,5-triaza-cyclohexane, hexogen or hexogene) (CAS 121–82–4);
b. Keto-RDX (K-6 or 2,4,6-trinitro-2,4,6-triazacyclohexanone) (CAS 115029–35–1);
22. TAGN (triaminoguanidinenitrate) (CAS 4000–16–2);
23. TATB (triaminotrinitrobenzene) (CAS 3058–38–6);
24. TEDDZ (3,3,7,7-tetrabis(difluoroamine) octahydro-1,5-dinitro-1,5-diazocine);
25. Tetrazoles as follows:
a. NTAT (nitrotriazol aminotetrazole);
b. NTNT (1-N-(2-nitrotriazolo)-4-nitrotetrazole);
26. Tetryl (trinitrophenylmethylnitramine) (CAS 479–45–8);
27. TNAD (1,4,5,8-tetranitro-1,4,5,8-tetraazadecalin) (CAS 135877–16–6);
28. TNAZ (1,3,3-trinitroazetidine) (CAS 97645–24–4);
29. TNGU (SORGUYL or tetranitroglycoluril) (CAS 55510–03–7);
30. TNP (1,4,5,8-tetranitro-pyridazino[4,5-d]pyridazine) (CAS 229176–04–9);
31. Triazines as follows:
a. DNAM (2-oxy-4,6-dinitroamino-s-triazine) (CAS 19899–80–0);
b. NNHT (2-nitroimino-5-nitro-hexahydro-1,3,5-triazine) (CAS 130400–13–4);
32. Triazoles as follows:
a. 5-azido-2-nitrotriazole;
b. ADHTDN (4-amino-3,5-dihydrazino-1,2,4-triazole dinitramide) (CAS 1614–08–0);
c. ADNT (1-amino-3,5-dinitro-1,2,4-triazole);
d. BDNTA ((bis-dinitrotriazole)amine);
e. DBT (3,3′-dinitro-5,5-bi-1,2,4-triazole) (CAS 30003–46–4);
f. DNBT (dinitrobistriazole) (CAS 70890–46–9);
g. [Reserved]
h. NTDNT (1-N-(2-nitrotriazolo) 3,5-dinitrotriazole);
i. PDNT (1-picryl-3,5-dinitrotriazole);
j. TACOT (tetranitrobenzotriazolobenzotriazole) (CAS 25243–36–1);
33. ''Explosives'' not listed elsewhere in this list having a detonation velocity exceeding 8,700 m/s, at maximum density, or a detonation pressure exceeding 34 GPa (340 kbar);
34. [Reserved]
35. Nitrocellulose (containing more than 12.5% nitrogen) (CAS 9004–70–0);
36. Nitroglycol (CAS 628–96–6);
37. Pentaerythritol tetranitrate (PETN) (CAS 78–11–5);
38. Picryl chloride (CAS 88–88–0);
39. 2,4,6 Trinitrotoluene (TNT) (CAS 118–96–7);
40. Nitroglycerine (NG) (CAS 55–63–0);
41. Triacetone Triperoxide (TATP) (CAS 17088–37–8);
42. Guanidine nitrate (CAS 506–93–4);
43. Nitroguanidine (NQ) (CAS 556–88–7);
44. DNAN (2,4-dinitroanisole) (CAS 119–27–7);
45. TEX (4,10-Dinitro-2,6,8,12-tetraoxa-4,10-diazaisowurtzitane);
46. GUDN (Guanylurea dinitramide) FOX-12 (CAS 217464–38–5);
47. Tetrazines as follows:
a. BTAT (Bis(2,2,2-trinitroethyl)-3,6-diaminotetrazine);
b. LAX-112 (3,6-diamino-1,2,4,5-tetrazine-1,4-dioxide);
48. Energetic ionic materials melting between 343 K (70 °C) and 373 K (100 °C) and with detonation velocity exceeding 6,800 m/s or detonation pressure exceeding 18 GPa (180 kbar);
49. BTNEN (Bis(2,2,2-trinitroethyl)-nitramine) (CAS 19836–28–3);
50. FTDO (5,6-(3′,4′-furazano)-1,2,3,4-tetrazine-1,3-dioxide).

■ 14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2A001 is revised to read as follows:

**2A001 Anti-friction bearings and bearing systems, as follows, (see List of Items Controlled) and ''components'' therefor.**

*Reason for Control:* NS, MT, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| MT applies to radial ball bearings having all tolerances specified in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9, or other national equivalents) or better and having all the following characteristics: An inner ring bore diameter between 12 and 50 mm; an outer ring outside diameter between 25 and 100 mm; and a width between 10 and 20 mm. | MT Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $3000, N/A for MT
*GBS:* Yes, for 2A001.a, N/A for MT
*CIV:* Yes, for 2A001.a, N/A for MT

**List of Items Controlled**

*Related Controls:* (1) See also 2A991. (2) Quiet running bearings are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).
Items:

**Note 1:** 2A001.a includes ball bearing and roller elements ''specially designed'' for the items specified therein.

**Note 2:** 2A001 does not control balls with tolerances specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse.

a. Ball bearings and solid roller bearings, having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 4 (or national equivalents), or better, and having both 'rings' and 'rolling elements', made from monel or beryllium;

**Note:** 2A001.a does not control tapered roller bearings.

**Technical Notes:**
1. 'Ring'—annular part of a radial rolling bearing incorporating one or more raceways (ISO 5593:1997).
2. 'Rolling element'- ball or roller which rolls between raceways (ISO 5593:1997).

b. [Reserved]
c. Active magnetic bearing systems using any of the following:
c.1. Materials with flux densities of 2.0 T or greater and yield strengths greater than 414 MPa;
c.2. All-electromagnetic 3D homopolar bias designs for actuators; or
c.3. High temperature (450 K (177 °C) and above) position sensors.

■ 15. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2B001 is revised to read as follows:

**2B001 Machine tools and any combination thereof, for removing (or cutting) metals, ceramics or ''composites'', which, according to the manufacturer's technical specifications, can be equipped with electronic devices for ''numerical control''; as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, NP, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NP applies to 2B001.a, .b, .c, and .d, EXCEPT: (1) turning machines under 2B001.a with a capacity no greater than 35 mm diameter; (2) bar machines (Swissturn), limited to machining only bar feed through, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks. (Machines may have drilling and/or milling capabilities for machining ''parts'' or ''components'' with diameters less than 42 mm); or (3) milling machines under 2B001.b with x-axis travel greater than two meters and overall positioning accuracy according to ISO 230/2 (2006) on the x-axis more (worse) than 22.5 μm. | NP Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* N/A
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* (1) See ECCN 2B002 for optical finishing machines. (2) See ECCNs 2D001 and 2D002 for software for items controlled under this entry. (3) See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E201 (''use'') for technology for items controlled under this entry. (4) Also see ECCNs 2B201 and 2B991.
*Related Definitions:* N/A
*Items:*

**Note 1:** 2B001 does not control special purpose machine tools limited to the manufacture of gears. For such machines, see 2B003.

**Note 2:** 2B001 does not control special purpose machine tools limited to the manufacture of any of the following:
a. Crank shafts or cam shafts;
b. Tools or cutters;
c. Extruder worms;
d. Engraved or faceted jewelry parts; or
e. Dental prostheses.

**Note 3:** A machine tool having at least two of the three turning, milling or grinding capabilities (e.g., a turning machine with milling capability), must be evaluated against each applicable entry 2B001.a., b. or c.

a. Machine tools for turning having two or more axes which can be coordinated simultaneously for ''contouring control'' having any of the following:
a.1. ''Unidirectional positioning repeatability'' equal to or less (better) than 0.9 μm along one or more linear axis with a travel length less than 1.0 m; *or*
a.2. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis with a travel length equal to or greater than 1.0 m;

**Note 1:** 2B001.a does not control turning machines ''specially designed'' for producing contact lenses, having all of the following:
a. Machine controller limited to using ophthalmic based ''software'' for part programming data input; and
b. No vacuum chucking.

**Note 2:** 2B001.a does not apply to bar machines (Swissturn), limited to machining only bar feed thru, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks. Machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm.

b. Machine tools for milling having any of the following:
b.1. Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'' having any of the following:
b.1.a. ''Unidirectional positioning repeatability'' equal to or less (better) than 0.9 μm along one or more linear axis with a travel length less than 1.0 m; *or*
b.1.b. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis with a travel length equal to or greater than 1.0 m;
b.2. Five or more axes which can be coordinated simultaneously for ''contouring control'' having any of the following:
b.2.a. ''Unidirectional positioning repeatability'' equal to or less (better) than 0.9 μm along one or more linear axis with a travel length less than 1.0 m;
b.2.b. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.4 μm along one or more linear axis with a travel length equal to or greater than 1 m and less than 4 m; *or*
b.2.c. ''Unidirectional positioning repeatability'' equal to or less (better) than 6.0 μm along one or more linear axis with a travel length equal to or greater than 4 m;
b.3. A ''unidirectional positioning repeatability'' for jig boring machines,, equal to or less (better) than 1.1 μm along one or more linear axis; *or*
b.4. Fly cutting machines having all of the following:
b.4.a. Spindle ''run-out'' and ''camming'' less (better) than 0.0004 mm TIR; *and*
b.4.b. Angular deviation of slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over 300 mm of travel;
c. Machine tools for grinding having any of the following:
c.1. Having all of the following:
c.1.a. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis; *and*
c.1.b. Three or more axes which can be coordinated simultaneously for ''contouring control''; or
c.2. Five or more axes which can be coordinated simultaneously for ''contouring control'' having any of the following:
c.2.a. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.1 μm along one or more linear axis with a travel length less than 1m;
c.2.b. ''Unidirectional positioning repeatability'' equal to or less (better) than 1.4 μm along one or more linear axis with a travel length equal to or greater than 1 m and less than 4 m; *or*
c.2.c. ''Unidirectional positioning repeatability'' equal to or less (better) than 6.0 μm along one or more linear axis with a travel length equal to or greater than 4 m.

**Notes:** 2B001.c does not control grinding machines as follows: a. Cylindrical external, internal, and external-internal grinding machines, having all of the following:
a.1. Limited to cylindrical grinding; and
a.2. Limited to a maximum workpiece capacity of 150 mm outside diameter or length.
b. Machines designed specifically as jig grinders that do not have a z-axis or a w-axis, with a ''unidirectional positioning repeatability'' less (better) than 1.1 μm.
c. Surface grinders.

d. Electrical discharge machines (EDM) of the non-wire type which have two or more rotary axes which can be coordinated simultaneously for ''contouring control'';
e. Machine tools for removing metals, ceramics or ''composites'', having all of the following:
e.1. Removing material by means of any of the following:
e.1.a. Water or other liquid jets, including those employing abrasive additives;
e.1.b. Electron beam; or
e.1.c. ''Laser'' beam; and
e.2. At least two rotary axes having all of the following:
e.2.a. Can be coordinated simultaneously for ''contouring control''; and
e.2.b. A positioning ''accuracy'' of less (better) than 0.003°;
f. Deep-hole-drilling machines and turning machines modified for deep-hole-drilling, having a maximum depth-of-bore capability exceeding 5 m.

■ 16. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2B005 is revised to read as follows:

**2B005 Equipment ''specially designed'' for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications, as follows, for substrates specified in column 2, by processes shown in column 1 in the ''Materials Processing Table; Deposition Techniques'' following 2E003.f (see List of Items Controlled), and ''specially designed'' automated handling, positioning, manipulation and control ''components'' therefor.**

**License Requirements**

*Reason for Control:* NS, AT

| Control(s) | Country chart (See Supp. No. 1 to part 738) |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $1000
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* (1) This entry does not control chemical vapor deposition, cathodic arc, sputter deposition, ion plating or ion implantation equipment, ''specially designed'' for cutting or machining tools. (2) Vapor deposition equipment for the production of filamentary materials are controlled by 1B001 or 1B101. (3) Chemical Vapor Deposition furnaces designed or modified for densification of carbon-carbon composites are controlled by *2B105.* (4) *See also 2B999.i.*
*Related Definitions:* N/A
*Items:*

a. Chemical vapor deposition (CVD)''production equipment''having all of the following:

a.1. A process modified for one of the following:

a.1.a. Pulsating CVD;

a.1.b. Controlled nucleation thermal deposition (CNTD); or

a.1.c. Plasma enhanced or plasma assisted CVD; and

a.2. Having any of the following:

a.2.a. Incorporating high vacuum (equal to or less than 0.01 Pa) rotating seals; or

a.2.b. Incorporating in situ coating thickness control;

b. Ion implantation ''production equipment'' having beam currents of 5 mA or more;

c. Electron beam physical vapor deposition (EB–PVD) ''production equipment'' incorporating power systems rated for over 80 kW and having any of the following:

c.1. A liquid pool level ''laser'' control system which regulates precisely the ingots feed rate; *or*

c.2. A computer controlled rate monitor operating on the principle of photo-luminescence of the ionized atoms in the evaporant stream to control the deposition rate of a coating containing two or more elements;

d. Plasma spraying ''production equipment'' having any of the following:

d.1. Operating at reduced pressure controlled atmosphere (equal or less than 10 kPa measured above and within 300 mm of the gun nozzle exit) in a vacuum chamber capable of evacuation down to 0.01 Pa prior to the spraying process; *or*

d.2. Incorporating in situ coating thickness control;

e. Sputter deposition ''production equipment'' capable of current densities of 0.1 mA/mm$^2$ or higher at a deposition rate 15 μm/h or more;

f. Cathodic arc deposition ''production equipment'' incorporating a grid of electromagnets for steering control of the arc spot on the cathode;

g. Ion plating ''production equipment'' capable of *in situ* measurement of any of the following:

g.1. Coating thickness on the substrate and rate control; *or*

g.2. Optical characteristics.

■ 17. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2B991 is revised to read as follows:

**2B991 Numerical control units for machine tools and ''numerically controlled'' machine tools, n.e.s. (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* AT

| Control(s) | Country chart (See Supp. No. 1 to part 738) |
|---|---|
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* N/A
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* See also ECCNs 2B001 and 2B201.
*Related Definitions:* N/A
*Items:*

a. ''Numerical control'' units for machine tools:

a.1. Having four interpolating axes that can be coordinated simultaneously for ''contouring control;'' or

a.2. Having two or more axes that can be coordinated simultaneously for ''contouring control'' and a minimum programmable increment better (less) than 0.001 mm;

a.3. ''Numerical control'' units for machine tools having two, three or four interpolating axes that can be coordinated simultaneously for ''contouring control,'' and capable of receiving directly (on-line) and processing computer-aided-design (CAD) data for internal preparation of machine instructions; *or*

b. ''Motion control boards'' ''specially designed'' for machine tools and having any of the following characteristics:

b.1. Interpolation in more than four axes;

b.2. Capable of ''real-time processing'' of data to modify tool path, feed rate and spindle data, during the machining operation, by any of the following:

b.2.a. Automatic calculation and modification of part program data for machining in two or more axes by means of measuring cycles and access to source data; *or*

b.2.b. ''Adaptive control'' with more than one physical variable measured and processed by means of a computing model (strategy) to change one or more machining instructions to optimize the process.

b.3. Capable of receiving and processing CAD data for internal preparation of machine instructions; *or*

c. ''Numerically controlled'' machine tools that, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous ''contouring control'' in two or more axes and that have both of the following characteristics:

c.1. Two or more axes that can be coordinated simultaneously for contouring control; *and*

c.2. Positioning accuracies according to ISO 230/2 (2006), with all compensations available:

c.2.a. Better than 15 μm along any linear axis (overall positioning) for grinding machines;

c.2.b. Better than 15 μm along any linear axis (overall positioning) for milling machines; *or*

c.2.c. Better than 15 μm along any linear axis (overall positioning) for turning machines; *or*

d. Machine tools, as follows, for removing or cutting metals, ceramics or composites, that, according to the manufacturer's technical specifications, can be equipped with electronic devices for simultaneous ''contouring control'' in two or more axes:

d.1. Machine tools for turning, grinding, milling or any combination thereof, having two or more axes that can be coordinated simultaneously for ''contouring control'' and having any of the following characteristics:

d.1.a. One or more contouring ''tilting spindles;''

**Note:** 2B991.d.1.a. applies to machine tools for grinding or milling only.

d.1.b. ''Camming'' (axial displacement) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

**Note:** 2B991.d.1.b. applies to machine tools for turning only.

d.1.c. ''Run out'' (out-of-true running) in one revolution of the spindle less (better) than 0.0006 mm total indicator reading (TIR);

d.1.d. The ''positioning accuracies'', with all compensations available, are less (better) than: 0.001° on any rotary axis;

d.2. Electrical discharge machines (EDM) of the wire feed type that have five or more axes that can be coordinated simultaneously for ''contouring control.''

■ 18. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2D992 is revised to read as follows:

**2D992 Specific ''software'', as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* AT

| Control(s) | Country chart (See Supp. No. 1 to part 738) |
|---|---|
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**List of Items Controlled**

*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

a. ''Software'' to provide ''adaptive control'' and having both of the following characteristics:

a.1. For ''flexible manufacturing units'' (FMUs) which consist at least of equipment described in b.1 and b.2 of the definition of ''flexible manufacturing unit'' contained in part 772 of the EAR; *and*

a.2. Capable of generating or modifying, in ''real-time processing'', programs or data by using the signals obtained simultaneously by means of at least two detection techniques, such as:

a.2.a. Machine vision (optical ranging);

a.2.b. Infrared imaging;

a.2.c. Acoustical imaging (acoustical ranging);

a.2.d. Tactile measurement;

a.2.e. Inertial positioning;

a.2.f. Force measurement; *and*

a.2.g. Torque measurement.

**Note:** 2D992.a does not control ''software'' which only provides rescheduling of functionally identical equipment within ''flexible manufacturing units'' using pre-stored part programs and a pre-stored strategy for the distribution of the part programs.

b. Reserved.

■ 19. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, ECCN 2E003 is revised to read as follows:

**2E003 Other ''technology'', as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* Yes, except 2E003.a, .b, .e and .f

**List of Items Controlled**

*Related Controls:* See 2E001, 2E002, and 2E101 for ''development'' and ''use'' technology for equipment that are designed or modified for densification of carbon-carbon composites, structural composite rocket nozzles and reentry vehicle nose tips.
*Related Definitions:* N/A
*Items:*

a. ''Technology'' for the ''development'' of interactive graphics as an integrated part in ''numerical control'' units for preparation or modification of part programs;

b. ''Technology'' for metal-working manufacturing processes, as follows:

b.1. ''Technology'' for the design of tools, dies or fixtures ''specially designed'' for any of the following processes:

b.1.a. ''Superplastic forming'';

b.1.b. ''Diffusion bonding''; *or*

b.1.c. ''Direct-acting hydraulic pressing'';

b.2. Technical data consisting of process methods or parameters as listed below used to control:

b.2.a. ''Superplastic forming'' of aluminum alloys, titanium alloys or ''superalloys'':

b.2.a.1. Surface preparation;

b.2.a.2. Strain rate;

b.2.a.3. Temperature;

b.2.a.4. Pressure;

b.2.b. ''Diffusion bonding'' of ''superalloys'' or titanium alloys:

b.2.b.1. Surface preparation;

b.2.b.2. Temperature;

b.2.b.3. Pressure;

b.2.c. ''Direct-acting hydraulic pressing'' of aluminum alloys or titanium alloys:

b.2.c.1. Pressure;

b.2.c.2. Cycle time;

b.2.d. ''Hot isostatic densification'' of titanium alloys, aluminum alloys or ''superalloys'':

b.2.d.1. Temperature;

b.2.d.2. Pressure;

b.2.d.3. Cycle time;

c. ''Technology'' for the ''development'' or ''production'' of hydraulic stretch-forming machines and dies therefor, for the manufacture of airframe structures;

d. ''Technology'' for the ''development'' of generators of machine tool instructions (*e.g.,* part programs) from design data residing inside ''numerical control'' units;

e. ''Technology for the development'' of integration ''software'' for incorporation of expert systems for advanced decision support of shop floor operations into ''numerical control'' units;

f. ''Technology'' for the application of inorganic overlay coatings or inorganic surface modification coatings (specified in column 3 of the following table) to non-electronic substrates (specified in column 2 of the following table), by processes specified in column 1 of the following table and defined in the Technical Note.

*N.B. This table should be read to control the technology of a particular 'Coating Process' only when the resultant coating in column 3 is in a paragraph directly across from the relevant 'Substrate' under column 2. For example, Chemical Vapor Deposition (CVD) 'coating process' control the ''technology'' for a particular application of 'silicides' to 'Carbon-carbon, Ceramic and Metal ''matrix'' ''composites'' substrates, but are not controlled for the application of 'silicides' to 'Cemented tungsten carbide (16), Silicon carbide (18)' substrates. In the second case, the resultant coating is not listed in the paragraph under column 3 directly across from the paragraph under column 2 listing 'Cemented tungsten carbide (16), Silicon carbide (18)'.*

■ 20. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2, Category 2E—Materials Processing Table; the Notes to Table on Deposition Techniques and the Accompanying Technical Information to Table on Deposition Techniques are revised to read as follows:

**Category 2E—Materials Processing Table; Deposition Techniques**

* * * * *

**Notes to Table on Deposition Techniques**

1. The term 'coating process' includes coating repair and refurbishing as well as original coating.

2. The term 'alloyed aluminide coating' includes single or multiple-step coatings in which an element or elements are deposited prior to or during application of the aluminide coating, even if these elements are deposited by another coating process. It does not, however, include the multiple use of single-step pack cementation processes to achieve alloyed aluminides.

3. The term 'noble metal modified aluminide' coating includes multiple-step coatings in which the noble metal or noble metals are laid down by some other coating process prior to application of the aluminide coating.

4. The term 'mixtures thereof' includes infiltrated material, graded compositions, co-deposits and multilayer deposits and are obtained by one or more of the coating processes specified in the Table.

5. MCrAlX refers to a coating alloy where M equals cobalt, iron, nickel or combinations thereof and X equals hafnium, yttrium, silicon, tantalum in any amount or other intentional additions over 0.01% by weight in various proportions and combinations, except:

a. CoCrAlY coatings which contain less than 22% by weight of chromium, less than 7% by weight of aluminum and less than 2% by weight of yttrium;

b. CoCrAlY coatings which contain 22 to 24% by weight of chromium, 10 to 12% by weight of aluminum and 0.5 to 0.7% by weight of yttrium; or

c. NiCrAlY coatings which contain 21 to 23% by weight of chromium, 10 to 12% by weight of aluminum and 0.9 to 1.1% by weight of yttrium.

6. The term 'aluminum alloys' refers to alloys having an ultimate tensile strength of 190 MPa or more measured at 293 K (20 °C).

7. The term 'corrosion resistant steel' refers to AISI (American Iron and Steel Institute) 300 series or equivalent national standard steels.

8. 'Refractory metals and alloys' include the following metals and their alloys: niobium (columbium), molybdenum, tungsten and tantalum.

9. 'Sensor window materials', as follows: alumina, silicon, germanium, zinc sulphide, zinc selenide, gallium arsenide, diamond, gallium phosphide, sapphire and the following metal halides: sensor window materials of more than 40 mm diameter for zirconium fluoride and hafnium fluoride.

10. Category 2 does not include ''technology'' for single-step pack cementation of solid airfoils.

11. 'Polymers', as follows: Polyimide, polyester, polysulfide, polycarbonates and polyurethanes.

12. 'Modified zirconia' refers to additions of other metal oxides, (e.g., calcia, magnesia, yttria, hafnia, rare earth oxides) to zirconia in order to stabilize certain crystallographic phases and phase compositions. Thermal barrier coatings made of zirconia, modified with calcia or magnesia by mixing or fusion, are not controlled.

13. 'Titanium alloys' refers only to aerospace alloys having an ultimate tensile strength of 900 MPa or more measured at 293 K (20 °C).

14. 'Low-expansion glasses' refers to glasses which have a coefficient of thermal expansion of $1 \times 10^{-7}\ K^{-1}$ or less measured at 293 K (20 °C).

15. 'Dielectric layers' are coatings constructed of multi-layers of insulator materials in which the interference properties of a design composed of materials of various refractive indices are used to reflect, transmit or absorb various wavelength bands. Dielectric layers refers to more than four dielectric layers or dielectric/metal ''composite'' layers.

16. 'Cemented tungsten carbide' does not include cutting and forming tool materials consisting of tungsten carbide/(cobalt, nickel), titanium carbide/(cobalt, nickel), chromium carbide/nickel-chromium and chromium carbide/nickel.

17. ''Technology'' for depositing diamond-like carbon on any of the following is not controlled: magnetic disk drives and heads, equipment for the manufacture of disposables, valves for faucets, acoustic diaphragms for speakers, engine parts for automobiles, cutting tools, punching-pressing dies, office automation equipment, microphones, medical devices or molds, for casting or molding of plastics, manufactured from alloys containing less than 5% beryllium.

18. 'Silicon carbide' does not include cutting and forming tool materials.

19. Ceramic substrates, as used in this entry, does not include ceramic materials containing 5% by weight, or greater, clay or cement content, either as separate constituents or in combination.

**Technical Note to Table on Deposition Techniques:** Processes specified in Column 1 of the Table are defined as follows:

a. Chemical Vapor Deposition (CVD) is an overlay coating or surface modification coating process wherein a metal, alloy, ''composite'', dielectric or ceramic is deposited upon a heated substrate. Gaseous reactants are decomposed or combined in the vicinity of a substrate resulting in the deposition of the desired elemental, alloy or compound material on the substrate. Energy for this decomposition or chemical reaction process may be provided by the heat of the substrate, a glow discharge plasma, or ''laser'' irradiation.

**Note 1:** CVD includes the following processes: directed gas flow out-of-pack deposition, pulsating CVD, controlled nucleation thermal decomposition (CNTD), plasma enhanced or plasma assisted CVD processes.

**Note 2:** Pack denotes a substrate immersed in a powder mixture.

**Note 3:** The gaseous reactants used in the out-of-pack process are produced using the same basic reactions and parameters as the pack cementation process, except that the substrate to be coated is not in contact with the powder mixture.

b. Thermal Evaporation-Physical Vapor Deposition (TE–PVD) is an overlay coating process conducted in a vacuum with a pressure less than 0.1 Pa wherein a source of thermal energy is used to vaporize the coating material. This process results in the condensation, or deposition, of the evaporated species onto appropriately positioned substrates. The addition of gases to the vacuum chamber during the coating process to synthesize compound coatings is an ordinary modification of the process. The use of ion or electron beams, or plasma, to activate or assist the coating's deposition is also a common modification in this technique. The use of monitors to provide in-process measurement of optical characteristics and thickness of coatings can be a feature of these processes. Specific TE–PVD processes are as follows:

1. Electron Beam PVD uses an electron beam to heat and evaporate the material which forms the coating;

2. Ion Assisted Resistive Heating PVD employs electrically resistive heating sources in combination with impinging ion beam(s) to produce a controlled and uniform flux of evaporated coating species;

3. ''Laser'' Vaporization uses either pulsed or continuous wave ''laser'' beams to vaporize the material which forms the coating;

4. Cathodic Arc Deposition employs a consumable cathode of the material which forms the coating and has an arc discharge established on the surface by a momentary contact of a ground trigger. Controlled motion of arcing erodes the cathode surface creating a highly ionized plasma. The anode can be either a cone attached to the periphery of the cathode, through an insulator, or the chamber. Substrate biasing is used for non line-of-sight deposition.

**Note:** This definition does not include random cathodic arc deposition with non-biased substrates.

5. Ion Plating is a special modification of a general TE–PVD process in which a plasma or an ion source is used to ionize the species to be deposited, and a negative bias is applied to the substrate in order to facilitate the extraction of the species from the plasma. The introduction of reactive species, evaporation of solids within the process chamber, and the use of monitors to provide in-process measurement of optical characteristics and thicknesses of coatings are ordinary modifications of the process.

c. Pack Cementation is a surface modification coating or overlay coating process wherein a substrate is immersed in a powder mixture (a pack), that consists of:

1. The metallic powders that are to be deposited (usually aluminum, chromium, silicon or combinations thereof);

2. An activator (normally a halide salt); and

3. An inert powder, most frequently alumina.

**Note:** The substrate and powder mixture is contained within a retort which is heated to between 1,030 K (757 °C) to 1,375 K (1,102 °C) for sufficient time to deposit the coating.

d. Plasma Spraying is an overlay coating process wherein a gun (spray torch) which produces and controls a plasma accepts powder or wire coating materials, melts them and propels them towards a substrate, whereon an integrally bonded coating is formed. Plasma spraying constitutes either low pressure plasma spraying or high velocity plasma spraying.

**Note 1:** Low pressure means less than ambient atmospheric pressure.

**Note 2:** High velocity refers to nozzle-exit gas velocity exceeding 750 m/s calculated at 293 K (20 °C) at 0.1 MPa.

e. Slurry Deposition is a surface modification coating or overlay coating process wherein a metallic or ceramic powder with an organic binder is suspended in a liquid and is applied to a substrate by either spraying, dipping or painting, subsequent air or oven drying, and heat treatment to obtain the desired coating.

f. Sputter Deposition is an overlay coating process based on a momentum transfer phenomenon, wherein positive ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on an appropriately positioned substrate.

**Note 1:** The Table refers only to triode, magnetron or reactive sputter deposition which is used to increase adhesion of the coating and rate of deposition and to radio frequency (RF) augmented sputter deposition used to permit vaporization of non-metallic coating materials.

**Note 2:** Low-energy ion beams (less than 5 keV) can be used to activate the deposition.

g. Ion Implantation is a surface modification coating process in which the element to be alloyed is ionized, accelerated through a potential gradient and implanted into the surface region of the substrate. This includes processes in which ion implantation is performed simultaneously with electron beam physical vapor deposition or sputter deposition.

*Accompanying Technical Information to Table on Deposition Techniques:*

1. Technical information for pretreatments of the substrates listed in the Table, as follows:

a. Chemical stripping and cleaning bath cycle parameters, as follows:

1. Bath composition;

a. For the removal of old or defective coatings corrosion product or foreign deposits;

b. For preparation of virgin substrates;

2. Time in bath;

3. Temperature of bath;

4. Number and sequences of wash cycles;

b. Visual and macroscopic criteria for acceptance of the cleaned part;

c. Heat treatment cycle parameters, as follows:

1. Atmosphere parameters, as follows:
a. Composition of the atmosphere;
b. Pressure of the atmosphere;
2. Temperature for heat treatment;
3. Time of heat treatment;
d. Substrate surface preparation parameters, as follows:
1. Grit blasting parameters, as follows:
a. Grit composition;
b. Grit size and shape;
c. Grit velocity;
2. Time and sequence of cleaning cycle after grit blast;
3. Surface finish parameters;
4. Application of binders to promote adhesion;
e. Masking technique parameters, as follows:
1. Material of mask;
2. Location of mask;
2. Technical information for in situ quality assurance techniques for evaluation of the coating processes listed in the Table, as follows:
a. Atmosphere parameters, as follows:
1. Composition of the atmosphere;
2. Pressure of the atmosphere;
b. Time parameters;
c. Temperature parameters;
d. Thickness parameters;
e. Index of refraction parameters;
f. Control of composition;
3. Technical information for post deposition treatments of the coated substrates listed in the Table, as follows:
a. Shot peening parameters, as follows:
1. Shot composition;
2. Shot size;
3. Shot velocity;
b. Post shot peening cleaning parameters;
c. Heat treatment cycle parameters, as follows:
1. Atmosphere parameters, as follows:
a. Composition of the atmosphere;
b. Pressure of the atmosphere;
2. Time-temperature cycles;
d. Post heat treatment visual and macroscopic criteria for acceptance of the coated substrates;
4. Technical information for quality assurance techniques for the evaluation of the coated substrates listed in the Table, as follows:
a. Statistical sampling criteria;
b. Microscopic criteria for:
1. Magnification;
2. Coating thickness, uniformity;
3. Coating integrity;
4. Coating composition;
5. Coating and substrates bonding;
6. Microstructural uniformity.
c. Criteria for optical properties assessment (measured as a function of wavelength):
1. Reflectance;
2. Transmission;
3. Absorption;
4. Scatter;
5. Technical information and parameters related to specific coating and surface modification processes listed in the Table, as follows:
a. For Chemical Vapor Deposition (CVD):
1. Coating source composition and formulation;
2. Carrier gas composition;
3. Substrate temperature;
4. Time-temperature-pressure cycles;
5. Gas control and part manipulation;
b. For Thermal Evaporation-Physical Vapor Deposition (PVD):
1. Ingot or coating material source composition;
2. Substrate temperature;
3. Reactive gas composition;
4. Ingot feed rate or material vaporization rate;
5. Time-temperature-pressure cycles;
6. Beam and part manipulation;
7. ''Laser'' parameters, as follows:
a. Wave length;
b. Power density;
c. Pulse length;
d. Repetition ratio;
e. Source;
c. For Pack Cementation:
1. Pack composition and formulation;
2. Carrier gas composition;
3. Time-temperature-pressure cycles;
d. For Plasma Spraying:
1. Powder composition, preparation and size distributions;
2. Feed gas composition and parameters;
3. Substrate temperature;
4. Gun power parameters;
5. Spray distance;
6. Spray angle;
7. Cover gas composition, pressure and flow rates;
8. Gun control and part manipulation;
e. For Sputter Deposition:
1. Target composition and fabrication;
2. Geometrical positioning of part and target;
3. Reactive gas composition;
4. Electrical bias;
5. Time-temperature-pressure cycles;
6. Triode power;
7. Part manipulation;
f. For Ion Implantation:
1. Beam control and part manipulation;
2. Ion source design details;
3. Control techniques for ion beam and deposition rate parameters;
4. Time-temperature-pressure cycles.
g. For Ion Plating:
1. Beam control and part manipulation;
2. Ion source design details;
3. Control techniques for ion beam and deposition rate parameters;
4. Time-temperature-pressure cycles;
5. Coating material feed rate and vaporization rate;
6. Substrate temperature;
7. Substrate bias parameters.

■ 21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, Product Group A, the Notes and Nota Bene at the beginning of Product Group A are revised to read as follows:

**Category 3—Electronics**

**A. ''End Items'', ''Equipment'', ''Accessories'', ''Attachments'', ''Parts'', ''Components'' and ''Systems''**

**Note 1:** The control status of equipment and components described in 3A001 or 3A002, other than those described in 3A001.a.3 to 3A001.a.10, 3A001.a.12 or 3A001.a.14, which are ''specially designed'' for or which have the same functional characteristics as other equipment is determined by the control status of the other equipment.

**Note 2:** The control status of integrated circuits described in 3A001.a.3 to 3A001.a.9, 3A001.a.12 or 3A001.a.14 that are unalterably programmed or designed for a specific function for other equipment is determined by the control status of the other equipment.

*N.B.: When the manufacturer or applicant cannot determine the control status of the other equipment, the control status of the integrated circuits is determined in 3A001.a.3 to 3A001.a.9, 3A001.a.12 and 3A001.a.14.*

■ 22. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3A001 is revised to read as follows:

**3A001 Electronic items as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, MT, NP, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those 3A001.b.2 and b.3 items being exported or reexported for use in civil telecommunications applications. | NS Column 1 |
| NS applies to entire entry | NS Column 2 |
| RS applies ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those 3A001.b.2 and b.3 items being exported or reexported for use in civil telecommunications applications. | RS Column 1 |

| Control(s) | Country chart (see Supp. No. 1 to part 738) |
|---|---|
| MT applies to 3A001.a.1.a when usable in ''missiles''; and to 3A001.a.5.a when ''designed or modified'' for military use, hermetically sealed and rated for operation in the temperature range from below −54 °C to above +125 °C MT Column 1. | MT applies to 3A001.a.1.a when usable in ''missiles''; and to 3A001.a.5.a when ''designed or modified'' for military use, hermetically sealed and rated for operation in the temperature range from below −54 °C to above +125 °C MT Column 1 |
| NP applies to pulse discharge capacitors in in 3A001.e.2 and superconducting solenoidal electromagnets in 3A001.e.3 that meet or exceed the technical parameters in 3A201.a and 3A201.b, respectively NP Column 1. | NP applies to pulse discharge capacitors in in 3A001.e.2 and superconducting solenoidal electromagnets in 3A001.e.3 that meet or exceed the technical parameters in 3A201.a and 3A201.b, respectively NP Column 1 |
| AT applies to entire entry AT Column 1 | AT applies to entire entry AT Column 1 |

**License Requirements Note:** See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* N/A for MT or NP; N/A for ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2 and discrete microwave transistors in 3A001.b.3, except those that are being exported or reexported for use in civil telecommunications applications.

Yes for:

$1500: 3A001.c

$3000: 3A001.b.1, b.2 (exported or reexported for use in civil telecommunications applications), b.3 (exported or reexported for use in civil telecommunications applications), b.9, .d, .e, .f, and .g.

$5000: 3A001.a (except a.1.a and a.5.a when controlled for MT), .b.4 to b.7, and b.12.

*GBS:* Yes for 3A001.a.1.b, a.2 to a.14 (except .a.5.a when controlled for MT), b.2 (exported or reexported for use in civil telecommunications applications), b.8 (except for vacuum electronic device amplifiers exceeding 18 GHz), b.9., b.10, .g, and .h.

*CIV:* Yes for 3A001.a.3, a.7, and a.11.

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship any item in 3A001.b.2 or b.3, except those that are being exported or reexported for use in civil telecommunications applications, to any of the destinations listed in Country Group A:5 or A:6 (See Supplement No. 1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* (1) See Category XV of the USML for certain ''space-qualified'' electronics and Category XI of the USML for certain ASICs, 'transmit/receive modules,' or 'transmit modules' ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) See also 3A101, 3A201, 3A611, 3A991, and 9A515.

*Related Definitions:* 'Microcircuit' means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit. For the purposes of integrated circuits in 3A001.a.1, $5 \times 10^3$ Gy(Si) = $5 \times 10^5$ Rads (Si); $5 \times 10^6$ Gy (Si)/s = $5 \times 10^8$ Rads (Si)/s. Spacecraft/satellite: Solar concentrators, power conditioners and or controllers, bearing and power transfer assembly, and or deployment hardware/systems are controlled under the export licensing authority of the Department of State, Directorate of Defense Trade Controls (22 CFR part 121).

*Items:*

a. General purpose integrated circuits, as follows:

**Note 1:** The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

**Note 2:** Integrated circuits include the following types:

—Monolithic integrated circuits;

—Hybrid integrated circuits;

—Multichip integrated circuits;

—Film type integrated circuits, including silicon-on-sapphire integrated circuits;

—Optical integrated circuits;

—''Three dimensional integrated circuits'';

—''Monolithic Microwave Integrated Circuits'' (''MMICs'').

a.1. Integrated circuits designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of $5 \times 10^3$ Gy (Si), or higher;

a.1.b. A dose rate upset of $5 \times 10^6$ Gy (Si)/s, or higher; *or*

a.1.c. A fluence (integrated flux) of neutrons (1 MeV equivalent) of $5 \times 10^{13}$ n/cm$^2$ or higher on silicon, or its equivalent for other materials;

**Note:** 3A001.a.1.c does not apply to Metal Insulator Semiconductors (MIS).

a.2. ''Microprocessor microcircuits,'' ''microcomputer microcircuits,'' microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, integrated circuits that contain analog-to-digital converters and store or process the digitized data, digital-to-analog converters, electro-optical or ''optical integrated circuits'' designed for ''signal processing,'' field programmable logic devices, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, Electrical Erasable Programmable Read-Only Memories (EEPROMs), flash memories, Static Random-Access Memories (SRAMs), or Magnetic Random Access Memories (MRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125 °C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55 °C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55 °C) to 398 K (125 °C);

**Note:** 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. ''Microprocessor microcircuits'', ''microcomputer microcircuits'' and microcontroller microcircuits, manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz;

**Note:** 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.4. [Reserved]

a.5. Analog-to-Digital Converter (ADC) and Digital-to-Analog Converter (DAC) integrated circuits, as follows:

a.5.a. ADCs having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 10 bit, with an output rate greater than 1.3 Giga Samples Per Second (GSPS);

a.5.a.2. A resolution of 10 bit or more, but less than 12 bit, with an output rate greater than 600 Mega Samples Per Second (MSPS);

a.5.a.3. A resolution of 12 bit or more, but less than 14 bit, with an output rate greater than 400 Mega Samples Per Second (MSPS);

a.5.a.4. A resolution of 14 bit or more, but less than 16 bit, with an output rate greater than 250 Mega Samples Per Second (MSPS); *or*

a.5.a.5. A resolution of 16 bit or more with an output rate greater than 65 Mega Samples Per Second (MSPS);

*N.B.: For integrated circuits that contain analog-to-digital converters and store or process the digitized data see 3A001.a.14.*

**Technical Notes:** 1. A resolution of n bit corresponds to a quantization of $2^n$ levels.

2. The number of bits in the output word is equal to the resolution of the ADC.

3. The output rate is the maximum output rate of the converter, regardless of architecture or oversampling.

4. For 'multiple channel ADCs', the outputs are not aggregated and the output rate is the maximum output rate of any single channel.

5. For 'interleaved ADCs' or for 'multiple channel ADCs' that are specified to have an interleaved mode of operation, the outputs are aggregated and the output rate is the maximum combined total output rate of all of the outputs.

6. Vendors may also refer to the output rate as sampling rate, conversion rate or throughput rate. It is often specified in megahertz (MHz), mega words per second or Mega Samples Per Second (MSPS).

7. For the purpose of measuring output rate, one sample per second is equivalent to one Hertz or one output word per second.

8. 'Multiple channel ADCs' are defined as devices which integrate more than one ADC, designed so that each ADC has a separate analog input.

9. 'Interleaved ADCs' are defined as devices which have multiple ADC units that sample the same analog input at different times such that when the outputs are aggregated, the analog input has been effectively sampled and converted at a higher sampling rate.

a.5.b. Digital-to-Analog Converters (DAC) having any of the following:

a.5.b.1. A resolution of 10 bit or more with an 'adjusted update rate' of greater than 3,500 MSPS; *or*

a.5.b.2. A resolution of 12-bit or more with an 'adjusted update rate' of greater than 1,250 MSPS and having any of the following:

a.5.b.2.a. A settling time less than 9 ns to 0.024% of full scale from a full scale step; or

a.5.b.2.b. A 'Spurious Free Dynamic Range' (SFDR) greater than 68 dBc (carrier) when synthesizing a full scale analog signal of 100 MHz or the highest full scale analog signal frequency specified below 100 MHz.

**Technical Notes:** 1. 'Spurious Free Dynamic Range' (SFDR) is defined as the ratio of the RMS value of the carrier frequency (maximum signal component) at the input of the DAC to the RMS value of the next largest noise or harmonic distortion component at its output.

2. SFDR is determined directly from the specification table or from the characterization plots of SFDR versus frequency.

3. A signal is defined to be full scale when its amplitude is greater than −3 dBfs (full scale).

4. 'Adjusted update rate' for DACs is:

a. For conventional (non-interpolating) DACs, the 'adjusted update rate' is the rate at which the digital signal is converted to an analog signal and the output analog values are changed by the DAC. For DACs where the interpolation mode may be bypassed (interpolation factor of one), the DAC should be considered as a conventional (non-interpolating) DAC.

b. For interpolating DACs (oversampling DACs), the 'adjusted update rate' is defined as the DAC update rate divided by the smallest interpolating factor. For interpolating DACs, the 'adjusted update rate' may be referred to by different terms including:

- Input data rate
- Input word rate
- Input sample rate
- Maximum total input bus rate
- Maximum DAC clock rate for DAC clock input.

a.6. Electro-optical and ''optical integrated circuits'', designed for ''signal processing'' and having all of the following:

a.6.a. One or more than one internal ''laser'' diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. 'Field programmable logic devices' having any of the following:

a.7.a. A maximum number of single-ended digital input/outputs of greater than 700; or

a.7.b. An 'aggregate one-way peak serial transceiver data rate' of 500 Gb/s or greater;

**Note:** 3A001.a.7 includes:

—Simple Programmable Logic Devices (SPLDs)

—Complex Programmable Logic Devices (CPLDs)

—Field Programmable Gate Arrays (FPGAs)

—Field Programmable Logic Arrays (FPLAs)

—Field Programmable Interconnects (FPICs)

*N.B.: For integrated circuits having field programmable logic devices that are combined with an analog-to-digital converter, see 3A001.a.14.*

**Technical Notes:** 1. Maximum number of digital input/outputs in 3A001.a.7.a is also referred to as maximum user input/outputs or maximum available input/outputs, whether the integrated circuit is packaged or bare die.

2. 'Aggregate one-way peak serial transceiver data rate' is the product of the peak serial one-way transceiver data rate times the number of transceivers on the FPGA.

a.8. [Reserved]

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,500 terminals;

a.10.b. A typical ''basic gate propagation delay time'' of less than 0.02 ns; or

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than $(N \log_2 N)/20{,}480$ ms, where N is the number of points;

**Technical Note:** When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 μs.

a.13. Direct Digital Synthesizer (DDS) integrated circuits having any of the following:

a.13.a. A Digital-to-Analog Converter (DAC) clock frequency of 3.5 GHz or more and a DAC resolution of 10 bit or more, but less than 12 bit; or

a.13.b. A DAC clock frequency of 1.25 GHz or more and a DAC resolution of 12 bit or more;

**Technical Note:** The DAC clock frequency may be specified as the master clock frequency or the input clock frequency.

a.14. Integrated circuits that perform all of the following:

a.14.a. Analog-to-digital conversions meeting any of the following:

a.14.a.1. A resolution of 8 bit or more, but less than 10 bit, with an input sample rate greater than 1.3 Giga Samples Per Second (GSPS);

a.14.a.2. A resolution of 10 bit or more, but less than 12 bit, with an input sample rate greater than 1.0 Giga Samples Per Second (GSPS);

a.14.a.3. A resolution of 12 bit or more, but less than 14 bit, with an input sample rate greater than 1.0 Giga Samples Per Second (GSPS);

a.14.a.4. A resolution of 14 bit or more, but less than 16 bit, with an input sample rate greater than 400 Mega Samples Per Second (MSPS); *or*

a.14.a.5. A resolution of 16 bit or more with an input sample rate greater than 180 Mega Samples Per Second (MSPS); *and*

a.14.b. Any of the following:

a.14.b.1. Storage of digitized data; *or*

a.14.b.2. Processing of digitized data;

*N.B. 1: For analog-to-digital converter integrated circuits see 3A001.a.5.a.*

*N.B. 2: For field programmable logic devices see 3A001.a.7.*

b. Microwave or millimeter wave items, as follows:

**Technical Notes:** 1. For purposes of 3A001.b, the parameter peak saturated power output may also be referred to on product data sheets as output power, saturated power output, maximum power output, peak power output, or peak envelope power output.

2. For purposes of 3A001.b.1, 'vacuum electronic devices' are electronic devices based on the interaction of an electron beam with an electromagnetic wave propagating in a vacuum circuit or interacting with radio-frequency vacuum cavity resonators. 'Vacuum electronic devices' include klystrons, traveling-wave tubes, and their derivatives.

b.1. 'Vacuum electronic devices' and cathodes, as follows:

**Note 1:** 3A001.b.1 does not control 'vacuum electronic devices' designed or rated for operation in any frequency band and having all of the following:

a. Does not exceed 31.8 GHz; *and*

b. Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

**Note 2:** 3A001.b.1 does not control non-''space-qualified'' 'vacuum electronic devices' having all the following:

a. An average output power equal to or less than 50 W; *and*

b. Designed or rated for operation in any frequency band and having all of the following:

1. Exceeds 31.8 GHz but does not exceed 43.5 GHz; *and*

2. Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

b.1.a. Traveling-wave 'vacuum electronic devices,' pulsed or continuous wave, as follows:

b.1.a.1. Devices operating at frequencies exceeding 31.8 GHz;

b.1.a.2. Devices having a cathode heater with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity devices, or derivatives thereof, with a ''fractional bandwidth'' of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Devices based on helix, folded waveguide, or serpentine waveguide circuits, or derivatives thereof, having any of the following:

b.1.a.4.a. An ''instantaneous bandwidth'' of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An ''instantaneous bandwidth'' of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1;

b.1.a.4.c. Being ''space-qualified''; *or*

b.1.a.4.d. Having a gridded electron gun;

b.1.a.5. Devices with a ''fractional bandwidth'' greater than or equal to 10%, with any of the following:

b.1.a.5.a. An annular electron beam;

b.1.a.5.b. A non-axisymmetric electron beam; *or*

b.1.a.5.c. Multiple electron beams;

b.1.b. Crossed-field amplifier 'vacuum electronic devices' with a gain of more than 17 dB;

b.1.c. Thermionic cathodes, designed for 'vacuum electronic devices,' producing an emission current density at rated operating conditions exceeding 5 A/cm² or a pulsed (non-continuous) current density at rated operating conditions exceeding 10 A/cm²;

b.1.d. 'Vacuum electronic devices' with the capability to operate in a 'dual mode.'

**Technical Note:** 'Dual mode' means the 'vacuum electronic device' beam current can be intentionally changed between continuous-wave and pulsed mode operation by use of a grid and produces a peak pulse output power greater than the continuous-wave output power.

b.2. ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers that are any of the following:

*N.B.: For ''MMIC'' amplifiers that have an integrated phase shifter see 3A001.b.12.*

b.2.a. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz with a ''fractional bandwidth'' greater than 15%, and having any of the following:

b.2.a.1. A peak saturated power output greater than 75 W (48.75 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

b.2.a.2. A peak saturated power output greater than 55 W (47.4 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

b.2.a.3. A peak saturated power output greater than 40 W (46 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

b.2.a.4. A peak saturated power output greater than 20 W (43 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

b.2.b. Rated for operation at frequencies exceeding 6.8 GHz up to and including 16 GHz with a ''fractional bandwidth'' greater than 10%, and having any of the following:

b.2.b.1. A peak saturated power output greater than 10 W (40 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz; *or*

b.2.b.2. A peak saturated power output greater than 5 W (37 dBm) at any frequency exceeding 8.5 GHz up to and including 16 GHz;

b.2.c. Rated for operation with a peak saturated power output greater than 3 W (34.77 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.2.d. Rated for operation with a peak saturated power output greater than 0.1n W (−70 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

b.2.e. Rated for operation with a peak saturated power output greater than 1 W (30 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.2.f. Rated for operation with a peak saturated power output greater than 31.62 mW (15 dBm) at any frequency exceeding 43.5 GHz up to and including 75 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.2.g. Rated for operation with a peak saturated power output greater than 10 mW (10 dBm) at any frequency exceeding 75 GHz up to and including 90 GHz, and with a ''fractional bandwidth'' of greater than 5%; *or*

b.2.h. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 90 GHz;

**Note 1:** [Reserved]

**Note 2:** The control status of the ''MMIC'' whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.2.a through 3A001.b.2.h, is determined by the lowest peak saturated power output control threshold.

**Note 3:** Notes 1 and 2 following the Category 3 heading for product group A. Systems, Equipment, and Components mean that 3A001.b.2 does not control ''MMICs'' if they are ''specially designed'' for other applications, *e.g.,* telecommunications, radar, automobiles.

b.3. Discrete microwave transistors that are any of the following:

b.3.a. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz and having any of the following:

b.3.a.1. A peak saturated power output greater than 400 W (56 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

b.3.a.2. A peak saturated power output greater than 205 W (53.12 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

b.3.a.3. A peak saturated power output greater than 115 W (50.61 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

b.3.a.4. A peak saturated power output greater than 60 W (47.78 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

b.3.b. Rated for operation at frequencies exceeding 6.8 GHz up to and including 31.8 GHz and having any of the following:

b.3.b.1. A peak saturated power output greater than 50 W (47 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz;

b.3.b.2. A peak saturated power output greater than 15 W (41.76 dBm) at any frequency exceeding 8.5 GHz up to and including 12 GHz;

b.3.b.3. A peak saturated power output greater than 40 W (46 dBm) at any frequency exceeding 12 GHz up to and including 16 GHz; *or*

b.3.b.4. A peak saturated power output greater than 7 W (38.45 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz;

b.3.c. Rated for operation with a peak saturated power output greater than 0.5 W (27 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

b.3.d. Rated for operation with a peak saturated power output greater than 1 W (30 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz; *or*

b.3.e. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 43.5 GHz;

**Note 1:** The control status of a transistor, whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.3.a through 3A001.b.3.e, is determined by the lowest peak saturated power output control threshold.

**Note 2:** 3A001.b.3 includes bare dice, dice mounted on carriers, or dice mounted in packages. Some discrete transistors may also be referred to as power amplifiers, but the status of these discrete transistors is determined by 3A001.b.3.

b.4. Microwave solid state amplifiers and microwave assemblies/modules containing microwave solid state amplifiers, that are any of the following:

b.4.a. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz with a ''fractional bandwidth'' greater than 15%, and having any of the following:

b.4.a.1. A peak saturated power output greater than 500 W (57 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

b.4.a.2. A peak saturated power output greater than 270 W (54.3 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

b.4.a.3. A peak saturated power output greater than 200 W (53 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

b.4.a.4. A peak saturated power output greater than 90 W (49.54 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

b.4.b. Rated for operation at frequencies exceeding 6.8 GHz up to and including 31.8 GHz with a ''fractional bandwidth'' greater than 10%, and having any of the following:

b.4.b.1. A peak saturated power output greater than 70 W (48.54 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz;

b.4.b.2. A peak saturated power output greater than 50 W (47 dBm) at any frequency exceeding 8.5 GHz up to and including 12 GHz;

b.4.b.3. A peak saturated power output greater than 30 W (44.77 dBm) at any frequency exceeding 12 GHz up to and including 16 GHz; *or*

b.4.b.4. A peak saturated power output greater than 20 W (43 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz;

b.4.c. Rated for operation with a peak saturated power output greater than 0.5 W (27 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

b.4.d. Rated for operation with a peak saturated power output greater than 2 W (33 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.4.e. Rated for operation at frequencies exceeding 43.5 GHz and having any of the following:

b.4.e.1. A peak saturated power output greater than 0.2 W (23 dBm) at any frequency exceeding 43.5 GHz up to and including 75 GHz, and with a ''fractional bandwidth'' of greater than 10%;

b.4.e.2. A peak saturated power output greater than 20 mW (13 dBm) at any frequency exceeding 75 GHz up to and including 90 GHz, and with a ''fractional bandwidth'' of greater than 5%; *or*

b.4.e.3. A peak saturated power output greater than 0.1 nW ($-70$ dBm) at any frequency exceeding 90 GHz; *or*

b.4.f. [Reserved]

*N.B.: 1. For ''MMIC'' amplifiers see 3A001.b.2.*

*2. For 'transmit/receive modules' and 'transmit modules' see 3A001.b.12.*

**Note 1:** [Reserved]

**Note 2:** The control status of an item whose rated operating frequency includes frequencies listed in more than one frequency range, as defined by 3A001.b.4.a through 3A001.b.4.e, is determined by the lowest peak saturated power output control threshold.

b.5. Electronically or magnetically tunable band-pass or band-stop filters, having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band ($f_{max}/f_{min}$) in less than 10 μs and having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. [Reserved]

b.7. Converters and harmonic mixers, that are any of the following:

b.7.a. Designed to extend the frequency range of ''signal analyzers'' beyond 90 GHz;

b.7.b. Designed to extend the operating range of signal generators as follows:

b.7.b.1. Beyond 90 GHz;

b.7.b.2. To an output power greater than 100 mW (20 dBm) anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

b.7.c. Designed to extend the operating range of network analyzers as follows:

b.7.c.1. Beyond 110 GHz;

b.7.c.2. To an output power greater than 31.62 mW (15 dBm) anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

b.7.c.3. To an output power greater than 1 mW (0 dBm) anywhere within the frequency range exceeding 90 GHz but not exceeding 110 GHz; *or*

b.7.d. Designed to extend the frequency range of microwave test receivers beyond 110 GHz;

b.8. Microwave power amplifiers containing 'vacuum electronic devices' controlled by 3A001.b.1 and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power to mass ratio exceeding 80 W/kg; and

b.8.c. A volume of less than 400 $cm^3$;

**Note:** 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

b.9. Microwave Power Modules (MPM) consisting of, at least, a traveling-wave 'vacuum electronic device', a ''Monolithic Microwave Integrated Circuit'' (''MMIC'') and an integrated electronic power conditioner and having all of the following:

b.9.a. A 'turn-on time' from off to fully operational in less than 10 seconds;

b.9.b. A volume less than the maximum rated power in Watts multiplied by 10 $cm^3$/W; *and*

b.9.c. An ''instantaneous bandwidth'' greater than 1 octave ($f_{max.} > 2f_{min,}$) and having any of the following:

b.9.c.1. For frequencies equal to or less than 18 GHz, an RF output power greater than 100 W; *or*

b.9.c.2. A frequency greater than 18 GHz;

**Technical Notes:** 1. To calculate the volume in 3A001.b.9.b., the following example is provided: for a maximum rated power of 20 W, the volume would be: 20 W $\times$ 10 $cm^3$/W = 200 $cm^3$.

2. The 'turn-on time' in 3A001.b.9.a. refers to the time from fully-off to fully operational, i.e., it includes the warm-up time of the MPM.

b.10. Oscillators or oscillator assemblies, specified to operate with a single sideband (SSB) phase noise, in dBc/Hz, less (better) than—$(126 + 20\log_{10}F - 20\log_{10}f)$ anywhere within the range of 10 Hz $\leq F \leq$ 10 kHz;

**Technical Note:** In 3A001.b.10, F is the offset from the operating frequency in Hz and f is the operating frequency in MHz.

b.11. ''Frequency synthesizer'' ''electronic assemblies'' having a ''frequency switching time'' as specified by any of the following:

b.11.a. Less than 143 ps;

b.11.b. Less than 100 μs for any frequency change exceeding 2.2 GHz within the synthesized frequency range exceeding 4.8 GHz but not exceeding 31.8 GHz;

b.11.c. [Reserved]

b.11.d. Less than 500 μs for any frequency change exceeding 550 MHz within the synthesized frequency range exceeding 31.8 GHz but not exceeding 37 GHz; *or*

b.11.e. Less than 100 μs for any frequency change exceeding 2.2 GHz within the synthesized frequency range exceeding 37 GHz but not exceeding 90 GHz; *or*

b.11.f. [Reserved]

b.11.g. Less than 1 ms within the synthesized frequency range exceeding 90 GHz;

*N.B.: For general purpose ''signal analyzers'', signal generators, network analyzers and microwave test receivers, see 3A002.c, 3A002.d, 3A002.e and 3A002.f, respectively.*

b.12. 'Transmit/receive modules,' 'transmit/receive MMICs,' 'transmit modules,' and 'transmit MMICs,' rated for operation at frequencies above 2.7 GHz and having all of the following:

b.12.a. A peak saturated power output (in watts), $P_{sat}$, greater than 505.62 divided by the maximum operating frequency (in GHz) squared [$P_{sat} > 505.62$ W * $GHz^2/f_{GHz}^2$] for any channel;

b.12.b. A ''fractional bandwidth'' of 5% or greater for any channel;

b.12.c. Any planar side with length d (in cm) equal to or less than 15 divided by the lowest operating frequency in GHz [d $\leq$ 15cm * GHz * $N/f_{GHz}$] where N is the number of transmit or transmit/receive channels; *and*

b.12.d. An electronically variable phase shifter per channel.

**Technical Notes:**

1. A 'transmit/receive module' is a multifunction ''electronic assembly'' that provides bi-directional amplitude and phase control for transmission and reception of signals.

2. A 'transmit module' is an ''electronic assembly'' that provides amplitude and phase control for transmission of signals.

3. A 'transmit/receive MMIC' is a multifunction ''MMIC'' that provides bi-directional amplitude and phase control for transmission and reception of signals.

4. A 'transmit MMIC' is a ''MMIC'' that provides amplitude and phase control for transmission of signals.

5. 2.7 GHz should be used as the lowest operating frequency ($f_{GHz}$) in the formula in 3A001.b.4.12.c for transmit/receive or transmit modules that have a rated operation range extending downward to 2.7 GHz and below [d $\leq$ 15cm * GHz * N/2.7 GHz].

6. 3A001.b.12 applies to 'transmit/receive modules' or 'transmit modules' with or

without a heat sink. The value of d in 3A001.b.12.c does not include any portion of the 'transmit/receive module' or 'transmit module' that functions as a heat sink.

7. 'Transmit/receive modules' or 'transmit modules,' 'transmit/receive MMICs' or 'transmit MMICs' may or may not have N integrated radiating antenna elements where N is the number of transmit or transmit/receive channels.

c. Acoustic wave devices as follows and ''specially designed'' ''components'' therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices, having any of the following:

c.1.a. A carrier frequency exceeding 6 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 6 GHz and having any of the following:

c.1.b.1. A 'frequency side-lobe rejection' exceeding 65 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 μs; *or*

c.1.c. A carrier frequency of 1 GHz or less and having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 μs; *or*

c.1.c.3. A 'frequency side-lobe rejection' exceeding 65 dB and a bandwidth greater than 100 MHz;

**Technical Note:** 'Frequency side-lobe rejection' is the maximum rejection value specified in data sheet.

c.2. Bulk (volume) acoustic wave devices that permit the direct processing of signals at frequencies exceeding 6 GHz;

c.3. Acoustic-optic ''signal processing'' devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

**Note:** 3A001.c does not control acoustic wave devices that are limited to a single band pass, low pass, high pass or notch filtering, or resonating function.

d. Electronic devices and circuits containing ''components,'' manufactured from ''superconductive'' materials, ''specially designed'' for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents and having any of the following:

d.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than $10^{-14}$ J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices as follows:

e.1. 'Cells' as follows:

e.1.a. 'Primary cells' having an 'energy density' exceeding 550 Wh/kg at 293 K (20 °C);

e.1.b. 'Secondary cells' having an 'energy density' exceeding 350 Wh/kg at 293 K (20 °C);

**Technical Notes:** 1. For the purpose of 3A001.e.1., 'energy density' (Wh/kg) is calculated from the nominal voltage multiplied by the nominal capacity in ampere-hours (Ah) divided by the mass in kilograms. If the nominal capacity is not stated, energy density is calculated from the nominal voltage squared then multiplied by the discharge duration in hours divided by the discharge load in Ohms and the mass in kilograms.

2. For the purpose of 3A001.e.1., a 'cell' is defined as an electrochemical device, which has positive and negative electrodes, an electrolyte, and is a source of electrical energy. It is the basic building block of a battery.

3. For the purpose of 3A001.e.1.a., a 'primary cell' is a 'cell' that is not designed to be charged by any other source.

4. For the purpose of 3A001.e.1.b., a 'secondary cell' is a 'cell' that is designed to be charged by an external electrical source.

**Note:** 3A001.e. does not control batteries, including single-cell batteries.

e.2. High energy storage capacitors as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) and having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) and having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. ''Superconductive'' electromagnets and solenoids, ''specially designed'' to be fully charged or discharged in less than one second and having all of the following:

**Note:** 3A001.e.3 does not control ''superconductive'' electromagnets or solenoids ''specially designed'' for Magnetic Resonance Imaging (MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or ''overall current density'' in the winding of more than 300 A/mm$^2$;

e.4. Solar cells, cell-interconnect-coverglass (CIC) assemblies, solar panels, and solar arrays, which are ''space-qualified,'' having a minimum average efficiency exceeding 20% at an operating temperature of 301 K (28 °C) under simulated 'AM0' illumination with an irradiance of 1,367 Watts per square meter (W/m$^2$);

**Technical Note:** 'AM0,' or 'Air Mass Zero,' refers to the spectral irradiance of sunlight in the earth's outer atmosphere when the distance between the earth and sun is one astronomical unit (AU).

f. Rotary input type absolute position encoders having an ''accuracy'' equal to or less (better) than ±1.0 second of arc and ''specially designed'' encoder rings, discs or scales therefor;

g. Solid-state pulsed power switching thyristor devices and 'thyristor modules', using either electrically, optically, or electron radiation controlled switch methods and having any of the following:

g.1. A maximum turn-on current rate of rise (di/dt) greater than 30,000 A/μs and off-state voltage greater than 1,100 V; *or*

g.2. A maximum turn-on current rate of rise (di/dt) greater than 2,000 A/μs and having all of the following:

g.2.a. An off-state peak voltage equal to or greater than 3,000 V; *and*

g.2.b. A peak (surge) current equal to or greater than 3,000 A;

**Note 1:** 3A001.g. includes:

—Silicon Controlled Rectifiers (SCRs)

—Electrical Triggering Thyristors (ETTs)

—Light Triggering Thyristors (LTTs)

—Integrated Gate Commutated Thyristors (IGCTs)

—Gate Turn-off Thyristors (GTOs)

—MOS Controlled Thyristors (MCTs)

—Solidtrons

**Note 2:** 3A001.g. does not control thyristor devices and 'thyristor modules' incorporated into equipment designed for civil railway or ''civil aircraft'' applications.

**Technical Note:** For the purposes of 3A001.g, a ''thyristor module'' contains one or more thyristor devices.

h. Solid-state power semiconductor switches, diodes, or 'modules', having all of the following:

h.1. Rated for a maximum operating junction temperature greater than 488 K (215 °C);

h.2. Repetitive peak off-state voltage (blocking voltage) exceeding 300 V; *and*

h.3. Continuous current greater than 1 A.

**Technical Note:** For the purposes of 3A001.h, 'modules' contain one or more solid-state power semiconductor switches or diodes.

**Note 1:** Repetitive peak off-state voltage in 3A001.h includes drain to source voltage, collector to emitter voltage, repetitive peak reverse voltage and peak repetitive off-state blocking voltage.

**Note 2:** 3A001.h. includes:

—Junction Field Effect Transistors (JFETs)

—Vertical Junction Field Effect Transistors (VJFETs)

—Metal Oxide Semiconductor Field Effect Transistors (MOSFETs)

—Double Diffused Metal Oxide Semiconductor Field Effect Transistor (DMOSFET)

—Insulated Gate Bipolar Transistor (IGBT)

—High Electron Mobility Transistors (HEMTs)

—Bipolar Junction Transistors (BJTs)
—Thyristors and Silicon Controlled Rectifiers (SCRs)
—Gate Turn-Off Thyristors (GTOs)
—Emitter Turn-Off Thyristors (ETOs)
—PiN Diodes
—Schottky Diodes

**Note 3:** 3A001.h. does not apply to switches, diodes, or 'modules', incorporated into equipment designed for civil automobile, civil railway, or ''civil aircraft'' applications.

■ 23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3A002 is revised to read as follows:

**3A002 General purpose ''electronic assemblies,'' modules and equipment, as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, MT, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| MT applies to 3A002.h when the parameters in 3A101.a.2.b are met or exceeded. | MT Column 1 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $3000: 3A002.a, .e, .f, and .g
$5000: 3A002.c to .d, and .h (unless controlled for MT);
*GBS:* Yes, for 3A002.h (unless controlled for MT)
*CIV:* Yes, for 3A002.h (unless controlled for MT)

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship any item in 3A002.g.1 to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* See Category XV(e)(9) of the USML for certain ''space-qualified'' atomic frequency standards ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3A101, 3A992 and 9A515.x.
*Related Definitions:* Constant percentage bandwidth filters are also known as octave or fractional octave filters.

*Items:*

a. Recording equipment and oscilloscopes, as follows:

a.1–a.5 [Reserved]

*N.B.: For waveform digitizers and transient recorders, see 3A002.h.*

**Technical Notes:** 1. For those instruments with a parallel bus architecture, the 'continuous throughput' rate is the highest word rate multiplied by the number of bits in a word.

2. 'Continuous throughput' is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

3. For the purposes of 3A002.a.5.c, acquisition can be triggered internally or externally.

a.6. Digital data recorders having all of the following:

a.6.a. A sustained 'continuous throughput' of more than 6.4 Gbit/s to disk or solid-state drive memory; *and*

a.6.b. A processor that performs analysis of radio frequency signal data while it is being recorded;

**Technical Notes:** 1. For recorders with a parallel bus architecture, the 'continuous throughput' rate is the highest word rate multiplied by the number of bits in a word.

2. 'Continuous throughput' is the fastest data rate the instrument can record to disk or solid-state drive memory without the loss of any information while sustaining the input digital data rate or digitizer conversion rate.

a.7. Real-time oscilloscopes having a vertical root-mean-square (rms) noise voltage of less than 2% of full-scale at the vertical scale setting that provides the lowest noise value for any input 3dB bandwidth of 60 GHz or greater per channel;

**Note:** 3A002.a.7 does not apply to equivalent-time sampling oscilloscopes.

b. [Reserved]

c. ''Signal analyzers'' as follows:

c.1. ''Signal analyzers'' having a 3 dB resolution bandwidth (RBW) exceeding 10 MHz anywhere within the frequency range exceeding 31.8 GHz but not exceeding 37 GHz;

c.2. ''Signal analyzers'' having Displayed Average Noise Level (DANL) less (better) than—150 dBm/Hz anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

c.3. ''Signal analyzers'' having a frequency exceeding 90 GHz;

c.4. ''Signal analyzers'' having all of the following:

c.4.a. ''Real-time bandwidth'' exceeding 170 MHz; *and*

c.4.b. Having any of the following:

c.4.b.1. 100% probability of discovery, with less than a 3 dB reduction from full amplitude due to gaps or windowing effects, of signals having a duration of 15 µs or less; *or*

c.4.b.2. A ''frequency mask trigger'' function, with 100% probability of trigger (capture) for signals having a duration of 15 µs or less;

**Technical Notes:**

1. Probability of discovery in 3A002.c.4.b.1 is also referred to as probability of intercept or probability of capture.

2. For the purposes of 3A002.c.4.b.1, the duration for 100% probability of discovery is equivalent to the minimum signal duration necessary for the specified level measurement uncertainty.

**Note:** 3A002.c.4 does not apply to those ''signal analyzers'' using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

c.5. [Reserved]

d. Signal generators having any of the following:

d.1. Specified to generate pulse-modulated signals having all of the following, anywhere within the frequency range exceeding 31.8 GHz but not exceeding 37 GHz:

d.1.a. 'Pulse duration' of less than 25 ns; *and*

d.1.b. On/off ratio equal to or exceeding 65 dB;

d.2. An output power exceeding 100 mW (20 dBm) anywhere within the frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

d.3. A ''frequency switching time'' as specified by any of the following:

d.3.a. [Reserved];

d.3.b. Less than 100 µs for any frequency change exceeding 2.2 GHz within the frequency range exceeding 4.8 GHz but not exceeding 31.8 GHz;

d.3.c. [Reserved]

d.3.d. Less than 500 µs for any frequency change exceeding 550 MHz within the frequency range exceeding 31.8 GHz but not exceeding 37 GHz; *or*

d.3.e. Less than 100 µs for any frequency change exceeding 2.2 GHz within the frequency range exceeding 37 GHz but not exceeding 90 GHz;

d.3.f. [Reserved]

d.4. Single sideband (SSB) phase noise, in dBc/Hz, specified as being any of the following:

d.4.a. Less (better) than—$(126 + 20 \log_{10} F - 20\log_{10} f)$ for anywhere within the range of $10 \text{ Hz} \leq F \leq 10$ kHz anywhere within the frequency range exceeding 3.2 GHz but not exceeding 90 GHz; *or*

d.4.b. Less (better) than—$(206 - 20\log_{10} f)$ for anywhere within the range of 10 kHz < F ≤ 100 kHz anywhere within the frequency range exceeding 3.2 GHz but not exceeding 90 GHz; *or*

**Technical Note:** In 3A002.d.4, F is the offset from the operating frequency in Hz and f is the operating frequency in MHz.

d.5. A maximum frequency exceeding 90 GHz;

**Note 1:** For the purpose of 3A002.d, signal generators include arbitrary waveform and function generators.

**Note 2:** 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

**Technical Notes:** 1. The maximum frequency of an arbitrary waveform or function generator is calculated by dividing the sample rate, in samples/second, by a factor of 2.5.

2. For the purposes of 3A002.d.1.a, 'pulse duration' is defined as the time interval from

the point on the leading edge that is 50% of the pulse amplitude to the point on the trailing edge that is 50% of the pulse amplitude.

e. Network analyzers having any of the following:

e.1. An output power exceeding 31.62 mW (15 dBm) anywhere within the operating frequency range exceeding 43.5 GHz but not exceeding 90 GHz;

e.2. An output power exceeding 1 mW (0 dBm) anywhere within the operating frequency range exceeding 90 GHz but not exceeding 110 GHz;

e.3. 'Nonlinear vector measurement functionality' at frequencies exceeding 50 GHz but not exceeding 110 GHz; *or*

**Technical Note:** 'Nonlinear vector measurement functionality' is an instrument's ability to analyze the test results of devices driven into the large-signal domain or the non-linear distortion range.

e.4. A maximum operating frequency exceeding 110 GHz;

f. Microwave test receivers having all of the following:

f.1. Maximum operating frequency exceeding 110 GHz; *and*

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards being any of the following:

g.1. ''Space-qualified'';

g.2. Non-rubidium and having a long-term stability less (better) than $1 \times 10^{-11/month}$; *or*

g.3. Non-''space-qualified'' and having all of the following:

g.3.a. Being a rubidium standard;

g.3.b. Long-term stability less (better) than $1 \times 10^{-11/month}$; *and*

g.3.c. Total power consumption of less than 1 Watt.

h. ''Electronic assemblies,'' modules or equipment, specified to perform all of the following:

h.1. Analog-to-digital conversions meeting any of the following:

h.1.a. A resolution of 8 bit or more, but less than 10 bit, with an input sample rate greater than 1.3 billion samples per second;

h.1.b. A resolution of 10 bit or more, but less than 12 bit, with an input sample rate greater than 1.0 billion samples per second;

h.1.c. A resolution of 12 bit or more, but less than 14 bit, with an input sample rate greater than 1.0 billion samples per second;

h.1.d. A resolution of 14 bit or more but less than 16 bit, with an input sample rate greater than 400 million samples per second; *or*

h.1.e. A resolution of 16 bit or more with an input sample rate greater than 180 million samples per second; *and*

h.2. Any of the following:

h.2.a. Output of digitized data;

h.2.b. Storage of digitized data; *or*

h.2.c. Processing of digitized data;

*N.B.: Digital data recorders, oscilloscopes, ''signal analyzers,'' signal generators, network analyzers and microwave test receivers, are specified by 3A002.a.6, 3A002.a.7, 3A002.c, 3A002.d, 3A002.e and 3A002.f, respectively.*

**Technical Note:** For multiple-channel ''electronic assemblies'' or modules, control status is determined by the highest single-channel specified performance.

**Note:** 3A002.h includes ADC cards, waveform digitizers, data acquisition cards, signal acquisition boards and transient recorders.

■ 24. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3A991 is revised to read as follows:

**3A991 Electronic devices, and ''components'' not controlled by 3A001.**

**License Requirements**

*Reason for Control:* AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| AT applies to entire entry. | AT Column 1 |

**License Requirements Note:** See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* N/A
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

a. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having any of the following:

a.1. A performance speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more;

a.2. A clock frequency rate exceeding 25 MHz; *or*

a.3. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate of 2.5 Mbyte/s.

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Analog-to-digital converters having any of the following:

c.1. A resolution of 8 bit or more, but less than 12 bit, with an output rate greater than 200 million words per second;

c.2. A resolution of 12 bit with an output rate greater than 105 million words per second;

c.3. A resolution of more than 12 bit but equal to or less than 14 bit with an output rate greater than 10 million words per second; *or*

c.4. A resolution of more than 14 bit with an output rate greater than 2.5 million words per second.

d. Field programmable logic devices having a maximum number of single-ended digital input/outputs between 200 and 700;

e. Fast Fourier Transform (FFT) processors having a rated execution time for a 1,024 point complex FFT of less than 1 ms.

f. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

f.1. More than 144 terminals; *or*

f.2. A typical ''basic propagation delay time'' of less than 0.4 ns.

g. Traveling-wave 'vacuum electronic devices,' pulsed or continuous wave, as follows:

g.1. Coupled cavity devices, or derivatives thereof;

g.2. Helix devices based on helix, folded waveguide, or serpentine waveguide circuits, *or* derivatives thereof, with any of the following:

g.2.a. An ''instantaneous bandwidth'' of half an octave or more; *and*

g.2.b. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

g.2.c. An ''instantaneous bandwidth'' of less than half an octave; *and*

g.2.d. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

h. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

i. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.,* ''signal processing'' devices employing elastic waves in materials), having either of the following:

i.1. A carrier frequency exceeding 1 GHz; *or*

i.2. A carrier frequency of 1 GHz or less; *and*

i.2.a. A frequency side-lobe rejection exceeding 55 Db;

i.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

i.2.c. A dispersive delay of more than 10 microseconds.

j. Cells as follows:

j.1. Primary cells having an energy density of 550 Wh/kg or less at 293 K (20 °C);

j.2. Secondary cells having an energy density of 300 Wh/kg or less at 293 K (20 °C).

**Note** : 3A991.j. does not control batteries, including single cell batteries.

**Technical Notes:** 1. For the purpose of 3A991.j energy density (Wh/kg) is calculated from the nominal voltage multiplied by the nominal capacity in ampere-hours divided by the mass in kilograms. If the nominal capacity is not stated, energy density is calculated from the nominal voltage squared then multiplied by the discharge duration in hours divided by the discharge load in Ohms and the mass in kilograms.

2. For the purpose of 3A991.j, a 'cell' is defined as an electrochemical device, which has positive and negative electrodes, and electrolyte, and is a source of electrical energy. It is the basic building block of a battery.

3. For the purpose of 3A991.j.1, a 'primary cell' is a 'cell' that is not designed to be charged by any other source.

4. For the purpose of 3A991.j.2., a 'secondary cell' is a 'cell' that is designed to be charged by an external electrical source.

k. ''Superconductive'' electromagnets or solenoids ''specially designed'' to be fully charged or discharged in less than one minute, having all of the following:

**Note:** 3A991.k does not control ''superconductive'' electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

k.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

k.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

k.3. Rated for a magnetic induction of more than 8T or ''overall current density'' in the winding of more than 300 A/mm$^2$.

l. Circuits or systems for electromagnetic energy storage, containing ''components'' manufactured from ''superconductive'' materials ''specially designed'' for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents, having all of the following:

l.1. Resonant operating frequencies exceeding 1 MHz;

l.2. A stored energy density of 1 MJ/M$^3$ or more; *and*

l.3. A discharge time of less than 1 ms;

m. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

n. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

o. Solar cells, cell-interconnect-coverglass (CIC) assemblies, solar panels, and solar arrays, which are ''space qualified'' and not controlled by 3A001.e.4.

■ 25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3B001 is revised to read as follows:

**3B001 Equipment for the manufacturing of semiconductor devices or materials, as follows (see List of Items Controlled) and ''specially designed'' ''components'' and ''accessories'' therefor.**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $500
*GBS:* Yes, except a.3 (molecular beam epitaxial growth equipment using gas sources), .e (automatic loading multi-chamber central wafer handling systems *only* if connected to equipment controlled by 3B001. a.3, or .f), and .f (lithography equipment).
*CIV:* Yes for equipment controlled by 3B001.a.1 and a.2.

**List of Items Controlled**

*Related Controls:* See also 3B991.
*Related Definitions:* N/A
*Items:*

a. Equipment designed for epitaxial growth as follows:

a.1. Equipment designed or modified to produce a layer of any material other than silicon with a thickness uniform to less than ±2.5% across a distance of 75 mm or more;

**Note:** 3B001.a.1 includes atomic layer epitaxy (ALE) equipment.

a.2. Metal Organic Chemical Vapor Deposition (MOCVD) reactors designed for compound semiconductor epitaxial growth of material having two or more of the following elements: aluminum, gallium, indium, arsenic, phosphorus, antimony, or nitrogen;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. Equipment designed for ion implantation and having any of the following:

b.1. [Reserved];

b.2. Being designed and optimized to operate at a beam energy of 20 keV or more and a beam current of 10 mA or more for hydrogen, deuterium, or helium implant;

b.3. Direct write capability;

b.4. A beam energy of 65 keV or more and a beam current of 45 mA or more for high energy oxygen implant into a heated semiconductor material ''substrate''; *or*

b.5. Being designed and optimized to operate at beam energy of 20keV or more and a beam current of 10mA or more for silicon implant into a semiconductor material ''substrate'' heated to 600 °C or greater;

c. [Reserved]

d. [Reserved]

e. Automatic loading multi-chamber central wafer handling systems having all of the following:

e.1. Interfaces for wafer input and output, to which more than two functionally different 'semiconductor process tools' controlled by 3B001.a.1, 3B001.a.2, 3B001.a.3 or 3B001.b are designed to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for 'sequential multiple wafer processing';

**Note:** 3B001.e does not control automatic robotic wafer handling systems ''specially designed'' for parallel wafer processing.

**Technical Notes:**

1. For the purpose of 3B001.e, 'semiconductor process tools' refers to modular tools that provide physical processes for semiconductor production that are functionally different, such as deposition, implant or thermal processing.

2. For the purpose of 3B001.e, 'sequential multiple wafer processing' means the capability to process each wafer in different 'semiconductor process tools', such as by transferring each wafer from one tool to a second tool and on to a third tool with the automatic loading multi-chamber central wafer handling systems.

f. Lithography equipment as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods and having any of the following:

f.1.a. A light source wavelength shorter than 193 nm; *or*

f.1.b. Capable of producing a pattern with a ''Minimum Resolvable Feature size'' (MRF) of 45 nm or less;

**Technical Note:** The 'Minimum Resolvable Feature size' (MRF) is calculated by the following formula:

$$MRF = \frac{\textit{(an exposure light source wavelength in nm) x (K factor)}}{\textit{numerical aperture}}$$

where the K factor = 0.35

f.2 Imprint lithography equipment capable of production features of 45 nm or less;

**Note:** 3B001.f.2 includes:
—Micro contact printing tools
—Hot embossing tools
—Nano-imprint lithography tools
—Step and flash imprint lithography (S–FIL) tools

f.3. Equipment ''specially designed'' for mask making having all of the following:

f.3.a. A deflected focused electron beam, ion beam or ''laser'' beam; *and*

f.3.b. Having any of the following:

f.3.b.1. A Full-Width Half-Maximum (FWHM) spot size smaller than 65 nm and an image placement less than 17 nm (mean + 3 sigma); *or*

f.3.b.2. [Reserved]

f.3.b.3. A second-layer overlay error of less than 23 nm (mean + 3 sigma) on the mask;

f.4. Equipment designed for device processing using direct writing methods, having all of the following:

f.4.a. A deflected focused electron beam; *and*

f.4.b. Having any of the following:

f.4.b.1. A minimum beam size equal to or smaller than 15 nm; *or*

f.4.b.2. An overlay error less than 27 nm (mean + 3 sigma);

g. Masks and reticles, designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer not specified by 3B001.g and having any of the following:

h.1. Made on a mask ''substrate blank'' from glass specified as having less than 7 nm/cm birefringence; *or*

h.2. Designed to be used by lithography equipment having a light source wavelength less than 245 nm;

**Note:** 3B001.h. does not control multi-layer masks with a phase shift layer designed for the fabrication of memory devices not controlled by 3A001.

i. Imprint lithography templates designed for integrated circuits by 3A001.

■ 26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3C001 is revised to read as follows:

**3C001 Hetero-epitaxial materials consisting of a ''substrate'' having stacked epitaxially grown multiple layers of any of the following (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $3000
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* This entry does not control equipment or material whose functionality has been unalterably disabled are not controlled.
*Related Definitions:* N/A
*Items:*

a. Silicon (Si);
b. Germanium (Ge);
c. Silicon Carbide (SiC); *or*
d. ''III/V compounds'' of gallium or indium.

**Note:** 3C001.d does not apply to a ''substrate'' having one or more P-type epitaxial layers of GaN, InGaN, AlGaN, InAlN, InAlGaN, GaP, GaAs, AlGaAs, InP, InGaP, AlInP or InGaAlP, independent of the sequence of the elements, except if the P-type epitaxial layer is between N-type layers.

■ 27. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3E001 is revised to read as follows:

**3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment or materials controlled by 3A (except 3A980, 3A981, 3A991, 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).**

**License Requirements**

*Reason for Control:* NS, MT, NP, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to ''technology'' for items controlled by 3A001, 3A002, 3A003, 3B001, 3B002, or 3C001 to 3C006. | NS Column 1 |
| MT applies to ''technology'' for equipment controlled by 3A001 or 3A101 for MT reasons. | MT Column 1 |
| NP applies to ''technology'' for equipment controlled by 3A001, 3A201, or 3A225 to 3A234 for NP reasons. | NP Column 1 |
| AT applies to entire entry. | AT Column 1 |

**License Requirements Note:** See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, Special Comprehensive Licenses, and Validated End-User authorizations.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* Yes for ''technology'' for equipment in 3B001.c.
*TSR:* Yes, except N/A for MT, and ''technology'' for the ''development'' or ''production'' of: (a) Vacuum electronic device amplifiers described in 3A001.b.8, having operating frequencies exceeding 19 GHz; (b) solar cells, coverglass-interconnect-cells or covered-interconnect-cells (CIC) ''assemblies,'' solar arrays and/or solar panels described in 3A001.e.4; (c) ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers in 3A001.b.2; and (d) discrete microwave transistors in 3A001.b.3.

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment specified by ECCNs 3A002.g.1 or 3B001.a.2 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR). License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of components specified by ECCN 3A001.b.2 or b.3 to any of the destinations listed in Country Group A:5 or A:6 (See Supplement No.1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* (1) ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of certain ''space-qualified'' atomic frequency standards described in Category XV(e)(9), MMICs described in Category XV(e)(14), and oscillators described in Category XV(e)(15) of the USML are ''subject to the ITAR'' (see 22 CFR parts 120 through 130). See also 3E101, 3E201 and 9E515. (2) ''Technology'' for ''development'' or ''production'' of ''Microwave Monolithic Integrated Circuits'' (''MMIC'') amplifiers in 3A001.b.2 is controlled in this ECCN 3E001; 5E001.d refers only to that additional ''technology'' ''required'' for telecommunications.
*Related Definition:* N/A
*Items:*

The list of items controlled is contained in the ECCN heading.

**Note 1:** 3E001 does not control ''technology'' for equipment or ''components'' controlled by 3A003.

**Note 2:** 3E001 does not control ''technology'' for integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:

(a) Using ''technology'' at or above 0.130 μm; and

(b) Incorporating multi-layer structures with three or fewer metal layers.

■ 28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3E002 is revised to read as follows:

**3E002** ''**Technology**'' **according to the General Technology Note other than that controlled in 3E001 for the** ''**development**'' **or** ''**production**'' **of a** ''**microprocessor microcircuit,**'' ''**microcomputer microcircuit**'' **and microcontroller microcircuit core, having an arithmetic logic unit with an access width of 32 bits or more and any of the following features or characteristics (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| AT applies to entire entry. | AT Column 1 |

**License Requirements Note:** See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* Yes, for deemed exports, as described in § 734.13(a)(2) of the EAR, of ''technology'' for the ''development'' or ''production'' of general purpose microprocessor cores with a vector processor unit with operand length of 64-bit or less, 64-bit floating operations not exceeding 50 GFLOPS, or 16-bit or more floating-point operations not exceeding 50 GMACS (billions of 16-bit fixed-point multiply-accumulate operations per second). License Exception CIV does not apply to ECCN 3E002 technology also required for the development or production of items controlled under ECCNs beginning with 3A, 3B, or 3C, or to ECCN 3E002 technology also controlled under ECCN 3E003.

*TSR:* Yes.

**List of Items Controlled**

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:*

a. A 'vector processor unit' designed to perform more than two calculations on floating-point vectors (one dimensional arrays of 32-bit or larger numbers) simultaneously;

**Technical Note:** A 'vector processor unit' is a processor element with built-in instructions that perform multiple calculations on floating-point vectors (one-dimensional arrays of 32-bit or larger numbers) simultaneously, having at least one vector arithmetic logic unit and vector registers of at least 32 elements each.

b. Designed to perform more than four 64-bit or larger floating-point operation results per cycle; *or*

c. Designed to perform more than eight 16-bit fixed-point multiply-accumulate results per cycle (*e.g.,* digital manipulation of analog information that has been previously converted into digital form, also known as digital ''signal processing'').

**Note 1:** 3E002 does not control ''technology'' for multimedia extensions.

**Note 2:** 3E002 does not control ''technology'' for microprocessor cores, having all of the following:

a. Using ''technology'' at or above 0.130 μm; *and*

b. Incorporating multi-layer structures with five or fewer metal layers.

**Note 3:** 3E002 includes ''technology'' for the ''development'' or ''production'' of digital signal processors and digital array processors.

■ 29. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3, ECCN 3E003 is revised to read as follows:

**3E003 Other** ''**technology**'' **for the** ''**development**'' **or** ''**production**'' **of the following (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country chart (See Supp. No.1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A

*TSR:* Yes, except .f and .g

**List of Items Controlled**

*Related Controls:* See 3E001 for silicon-on-insulation (SOI) technology for the ''development'' or ''production'' related to radiation hardening of integrated circuits.

*Related Definitions:* N/A

*Items:*

a. Vacuum microelectronic devices;

b. Hetero-structure semiconductor electronic devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;

**Note:** 3E003.b does not control ''technology'' for high electron mobility transistors (HEMT) operating at frequencies lower than 31.8 GHz and hetero-junction bipolar transistors (HBT) operating at frequencies lower than 31.8 GHz.

c. ''Superconductive'' electronic devices;

d. Substrates of films of diamond for electronic components;

e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;

f. Substrates of silicon carbide for electronic components;

g. 'Vacuum electronic devices' operating at frequencies of 31.8 GHz or higher.

■ 30. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4, ECCN 4A003 is revised to read as follows:

**4A003** ''**Digital computers,**'' ''**electronic assemblies,**'' **and related equipment therefor, as follows (see List of Items Controlled) and** ''**specially designed**'' ''**components**'' **therefor.**

**License Requirements**

*Reason for Control:* NS, CC, AT

| *Control(s)* | *Country chart (See Supp. No.1 to part 738)* |
|---|---|
| NS applies to 4A003.b and .c. | NS Column 1 |
| NS applies to 4A003.e and .g. | NS Column 2 |
| CC applies to ''digital computers'' for computerized finger-print equipment. | CC Column 1 |
| AT applies to entire entry (refer to 4A994 for controls on ''digital computers'' with an APP > 0.0128 but ≤ 16 WT). | AT Column 1 |

**Note:** For all destinations, except those countries in Country Group E:1 or E:2 of Supplement No. 1 to part 740 of the EAR, no license is required (NLR) for computers with an ''Adjusted Peak Performance'' (''APP'') not exceeding 16 Weighted TeraFLOPS (WT) and for ''electronic assemblies'' described in 4A003.c that are not capable of exceeding an ''Adjusted Peak Performance'' (''APP'') exceeding 16 Weighted TeraFLOPS (WT) in aggregation, except certain transfers as set forth in § 746.3 (Iraq).

**Reporting Requirements**

Special Post Shipment Verification reporting and recordkeeping requirements for exports of computers to destinations in Computer Tier 3 may be found in § 743.2 of the EAR.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

LVS: $5000; N/A for 4A003.b and .c.

GBS: Yes, for 4A003.g and ''specially designed'' ''parts'' and ''components'' therefor, exported separately or as part of a system.

APP: Yes, for computers controlled by 4A003.b, and ''electronic assemblies'' controlled by 4A003.c, to the exclusion of

other technical parameters. See § 740.7 of the EAR.

CIV: Yes, for 4A003.g.

**List of Items Controlled**

*Related Controls:* See also *4A994* and *4A980*
*Related Definitions:* N/A
*Items:*

**Note 1:** 4A003 includes the following:

—'Vector processors' (as defined in Note 7 of the ''Technical Note on ''Adjusted Peak Performance'' (''APP'')'');
—*Array processors;*
—*Digital signal processors;*
—*Logic processors;*
—*Equipment designed for ''image enhancement.''*

**Note 2:** The control status of the ''digital computers'' and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:

a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;

b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; and

*N.B. 1: The control status of ''signal processing'' or ''image enhancement'' equipment ''specially designed'' for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.*

*N.B. 2: For the control status of ''digital computers'' or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).*

c. The ''technology'' for the ''digital computers'' and related equipment is determined by 4E.

a. [Reserved]

b. ''Digital computers'' having an ''Adjusted Peak Performance'' (''APP'') exceeding 16 weighted TeraFLOPS (WT);

c. ''Electronic assemblies'' ''specially designed'' or modified to be capable of enhancing performance by aggregation of processors so that the ''APP'' of the aggregation exceeds the limit in 4A003.b;

**Note 1:** 4A003.c applies only to ''electronic assemblies'' and programmable interconnections not exceeding the limit in 4A003.b when shipped as unintegrated ''electronic assemblies.''

**Note 2:** 4A003.c does not control ''electronic assemblies'' ''specially designed'' for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. to f. [Reserved]

*N.B.: For ''electronic assemblies,'' modules or equipment, performing analog-to-digital conversions, see 3A002.h.*

g. Equipment ''specially designed'' for aggregating the performance of ''digital computers'' by providing external interconnections which allow communications at unidirectional data rates exceeding 2.0 Gbyte/s per link.

**Note:** 4A003.g does not control internal interconnection equipment (*e.g.,* backplanes, buses) passive interconnection equipment, ''network access controllers'' or ''communication channel controllers.''

■ 31. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4, ECCN 4D001 is revised to read as follows:

**4D001 ''Software'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, CC, AT

| *Control(s)* | *Country chart (See Supp. No.1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| CC applies to ''software'' for computerized finger-print equipment controlled by 4A003 for CC reasons. | CC Column 1 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* Yes, except for ''software'' for the ''development'' or ''production'' of commodities with an ''Adjusted Peak Performance'' (''APP'') exceeding 16 WT.
*APP:* Yes to specific countries (see § 740.7 of the EAR for eligibility criteria)

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship or transmit ''software'' ''specially designed'' for the ''development'' or ''production'' of equipment specified by ECCN 4A001.a.2 or for the ''development'' or ''production'' of ''digital computers'' having an 'Adjusted Peak Performance' ('APP') exceeding 16 Weighted TeraFLOPS (WT) to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

a. ''Software'' ''specially designed'' or modified for the ''development'' or ''production'', of equipment or ''software'' controlled by 4A001, 4A003, 4A004, or 4D (except 4D980, 4D993 or 4D994).

b. ''Software'', other than that controlled by 4D001.a, ''specially designed'' or modified for the ''development'' or ''production'' of equipment as follows:

b.1. ''Digital computers'' having an ''Adjusted Peak Performance'' (''APP'') exceeding 8.0 Weighted TeraFLOPS (WT);

b.2. ''Electronic assemblies'' ''specially designed'' or modified for enhancing performance by aggregation of processors so that the ''APP'' of the aggregation exceeds the limit in 4D001.b.1.

■ 32. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4, ECCN 4D993 is revised to read as follows:

**4D993 ''Program'' proof and validation ''software,'' ''software'' allowing the automatic generation of ''source codes,'' and operating system ''software'' that are ''specially designed'' for ''real-time processing'' equipment (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**List of Items Controlled**

*Related Controls:* N/A
*Related Definitions:* ''Global interrupt latency time'' is the time taken by the computer system to recognize an interrupt due to the event, service the interrupt and perform a context switch to an alternate memory-resident task waiting on the interrupt.
*Items:*

a. ''Program'' proof and validation ''software'' using mathematical and analytical techniques and designed or modified for ''programs'' having more than 500,000 ''source code'' instructions;

b. ''Software'' allowing the automatic generation of ''source codes'' from data acquired online from external sensors described in the Commerce Control List; *or*

c. Operating system ''software'' ''specially designed'' for ''real-time processing'' equipment that guarantees a ''global interrupt latency time'' of less than 20 microseconds.

■ 33. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4, ECCN 4E001 is revised to read as follows:

**4E001 ''Technology'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, MT, CC, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| MT applies to ''technology'' for items controlled by 4A001.a and 4A101 for MT reasons. | MT Column 1 |

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| CC applies to ''software'' for computerized finger-print equipment controlled by 4A003 for CC reasons. | CC Column 1 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A

*TSR:* Yes, except for ''technology'' for the ''development'' or ''production'' of commodities with an ''Adjusted Peak Performance'' (''APP'') exceeding 16 WT.

*APP:* Yes to specific countries (see § 740.7 of the EAR for eligibility criteria).

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of any of the following equipment or ''software'': a. Equipment specified by ECCN 4A001.a.2; b. ''Digital computers'' having an 'Adjusted Peak Performance' ('APP') exceeding 16 Weighted TeraFLOPS (WT); or c. ''software'' specified in the License Exception STA paragraph found in the License Exception section of ECCN 4D001 to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:*

a. ''Technology'' according to the General Technology Note, for the ''development'', ''production'', or ''use'' of equipment or ''software'' controlled by 4A (except 4A980 or 4A994) or 4D (except 4D980, 4D993, 4D994).

b. ''Technology'' according to the General Technology Note, other than that controlled by 4E001.a, for the ''development'' or ''production'' of equipment as follows:

b.1. ''Digital computers'' having an ''Adjusted Peak Performance'' (''APP'') exceeding 8.0 Weighted TeraFLOPS (WT);

b.2. ''Electronic assemblies'' ''specially designed'' or modified for enhancing performance by aggregation of processors so that the ''APP'' of the aggregation exceeds the limit in 4E001.b.1.

■ 34. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 1, ECCN 5A001 is revised to read as follows:

**5A001 Telecommunications systems, equipment, ''components'' and ''accessories,'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, SL, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to 5A001.a, .e, .b.5, f.3 and .h | NS Column 1 |
| NS applies to 5A001.b (except .b.5), .c, .d, .f (except f.3), and .g | NS Column 2 |
| SL applies to 5A001.f.1 | A license is required for all destinations, as specified in § 742.13 of the EAR. Accordingly, a column specific to this control does not appear on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR)<br>**Note to SL paragraph:** *This licensing requirement does not supersede, nor does it implement, construe or limit the scope of any criminal statute, including, but not limited to the Omnibus Safe Streets Act of 1968, as amended* |
| AT applies to entire entry | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* N/A for 5A001.a, b.5, .e, f.3 and .h; $5000 for 5A001.b.1, .b.2, .b.3, .b.6, .d, f.2, f.4, and .g; $3000 for 5A001.c.

*GBS:* Yes, except 5A001.a, b.5, e, and h.

*CIV:* Yes, except 5A001.a, b.3, b.5, e, and h.

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship any commodity in 5A001.b.3, .b.5 or .h to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* (1) See USML Category XI for controls on direction-finding ''equipment'' including types of ''equipment'' in ECCN 5A001.e and any other military or intelligence electronic ''equipment'' that is ''subject to the ITAR.'' (2) See USML Category XI(a)(4)(iii) for controls on electronic attack and jamming ''equipment'' defined in 5A001.f and .h that are subject to the ITAR. (3) See also ECCNs 5A101, 5A980, and 5A991.

*Related Definitions:* N/A

*Items:*

a. Any type of telecommunications equipment having any of the following characteristics, functions or features:

a.1. ''Specially designed'' to withstand transitory electronic effects or electromagnetic pulse effects, both arising from a nuclear explosion;

a.2. Specially hardened to withstand gamma, neutron or ion radiation; *or*

a.3. ''Specially designed'' to operate outside the temperature range from 218 K (−55 °C) to 397 K (124 °C).

**Note:** 5A001.a.3 applies only to electronic equipment.

b. Telecommunication systems and equipment, and ''specially designed'' ''components'' and ''accessories'' therefor, having any of the following characteristics, functions or features:

b.1 Being underwater untethered communications systems having any of the following:

b.1.a. An acoustic carrier frequency outside the range from 20 kHz to 60 kHz;

b.1.b. Using an electromagnetic carrier frequency below 30 kHz; *or*

b.1.c. Using electronic beam steering techniques; *or*

b.1.d. Using ''lasers'' or light-emitting diodes (LEDs), with an output wavelength greater than 400 nm and less than 700 nm, in a ''local area network'';

b.2. Being radio equipment operating in the 1.5 MHz to 87.5 MHz band and having all of the following:

b.2.a. Automatically predicting and selecting frequencies and ''total digital transfer rates'' per channel to optimize the transmission; *and*

b.2.b. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the frequency range of 1.5 MHz or more but less than 30 MHz, or 250 W or more in the frequency range of 30 MHz or more but not exceeding 87.5 MHz, over an ''instantaneous bandwidth'' of one octave or more and with an output harmonic and distortion content of better than −80 dB;

b.3. Being radio equipment employing ''spread spectrum'' techniques, including ''frequency hopping'' techniques, not controlled in 5A001.b.4 and having any of the following:

b.3.a. User programmable spreading codes; *or*

b.3.b. A total transmitted bandwidth which is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

**Note:** 5A001.b.3.b does not control radio equipment ''specially designed'' for use with any of the following:

a. Civil cellular radio-communications systems; or

b. Fixed or mobile satellite Earth stations for commercial civil telecommunications.

**Note:** 5A001.b.3 does not control equipment operating at an output power of 1 W or less.

b.4 Being radio equipment employing ultra-wideband modulation techniques, having user programmable channelizing codes, scrambling codes, or network identification codes and having any of the following:

b.4.a. A bandwidth exceeding 500 MHz; *or*

b.4.b. A ''fractional bandwidth'' of 20% or more;

b.5. Being digitally controlled radio receivers having all of the following:

b.5.a. More than 1,000 channels;

b.5.b. A 'channel switching time' of less than 1 ms;

b.5.c. Automatic searching or scanning of a part of the electromagnetic spectrum; *and*

b.5.d. Identification of the received signals or the type of transmitter; *or*

**Note:** 5A001.b.5 does not control radio equipment ''specially designed'' for use with civil cellular radio-communications systems.

**Technical Note:** 'Channel switching time': the time (*i.e.,* delay) to change from one receiving frequency to another, to arrive at or within ±0.05% of the final specified receiving frequency. Items having a specified frequency range of less than ±0.05% around their center frequency are defined to be incapable of channel frequency switching.

b.6. Employing functions of digital ''signal processing'' to provide 'voice coding' output at rates of less than 700 bit/s.

**Technical Notes:**

1. For variable rate 'voice coding', 5A001.b.6 applies to the 'voice coding' output of continuous speech.

2. For the purpose of 5A001.b.6, 'voice coding' is defined as the technique to take samples of human voice and then convert these samples of human voice into a digital signal taking into account specific characteristics of human speech.

c. Optical fibers of more than 500 m in length and specified by the manufacturer as being capable of withstanding a 'proof test' tensile stress of $2 \times 10^9$ N/m$^2$ or more;

*N.B.: For underwater umbilical cables, see 8A002.a.3.*

**Technical Note:** 'Proof Test': On-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20 °C) and relative humidity 40%. Equivalent national standards may be used for executing the proof test.

d. ''Electronically steerable phased array antennas'' as follows:

d.1. Rated for operation above 31.8 GHz, but not exceeding 57 GHz, and having an Effective Radiated Power (ERP) equal to or greater than +20 dBm (22.15 dBm Effective Isotropic Radiated Power (EIRP));

d.2. Rated for operation above 57 GHz, but not exceeding 66 GHz, and having an ERP equal to or greater than +24 dBm (26.15 dBm EIRP);

d.3. Rated for operation above 66 GHz, but not exceeding 90 GHz, and having an ERP equal to or greater than +20 dBm (22.15 dBm EIRP);

d.4. Rated for operation above 90 GHz;

**Note:** 5A001.d does not control ''electronically steerable phased array antennas'' for landing systems with instruments meeting ICAO standards covering Microwave Landing Systems (MLS).

e. Radio direction finding equipment operating at frequencies above 30 MHz and having all of the following, and ''specially designed'' ''components'' therefor:

e.1. ''Instantaneous bandwidth'' of 10 MHz or more; and

e.2. Capable of finding a Line Of Bearing (LOB) to non-cooperating radio transmitters with a signal duration of less than 1 ms;

f. Mobile telecommunications interception or jamming equipment, and monitoring equipment therefor, as follows, and ''specially designed'' ''components'' therefor:

f.1. Interception equipment designed for the extraction of voice or data, transmitted over the air interface;

f.2. Interception equipment not specified in 5A001.f.1, designed for the extraction of client device or subscriber identifiers (*e.g.,* IMSI, TIMSI or IMEI), signaling, or other metadata transmitted over the air interface;

f.3. Jamming equipment ''specially designed'' or modified to intentionally and selectively interfere with, deny, inhibit, degrade or seduce mobile telecommunication services and performing any of the following:

f.3.a. Simulate the functions of Radio Access Network (RAN) equipment;

f.3.b. Detect and exploit specific characteristics of the mobile telecommunications protocol employed (*e.g.,* GSM); *or*

f.3.c. Exploit specific characteristics of the mobile telecommunications protocol employed (*e.g.,* GSM);

f.4. Radio Frequency (RF) monitoring equipment designed or modified to identify the operation of items specified in 5A001.f.1, 5A001.f.2 or 5A001.f.3.

**Note:** 5A001.f.1 and 5A001.f.2 do not apply to any of the following:

a. Equipment ''specially designed'' for the interception of analog Private Mobile Radio (PMR), IEEE 802.11 WLAN;

b. Equipment designed for mobile telecommunications network operators; or

c. Equipment designed for the ''development'' or ''production'' of mobile telecommunications equipment or systems.

*N.B. 1: See also the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). For items specified by 5A001.f.1 (including as previously specified by 5A001.i), see also5A980 and the U.S. Munitions List (22 CFR part 121).*

*N.B. 2: For radio receivers see 5A001.b.5.*

g. Passive Coherent Location (PCL) systems or equipment, ''specially designed'' for detecting and tracking moving objects by measuring reflections of ambient radio frequency emissions, supplied by non-radar transmitters.

**Technical Note:** Non-radar transmitters may include commercial radio, television or cellular telecommunications base stations.

**Note:** 5A001.g. does not control:

a. Radio-astronomical equipment; *or*

b. Systems or equipment, that require any radio transmission from the target.

h. Counter Improvised Explosive Device (IED) equipment and related equipment, as follows:

h.1. Radio Frequency (RF) transmitting equipment, not specified by 5A001.f, designed or modified for prematurely activating or preventing the initiation of Improvised Explosive Devices (IEDs);

h.2. Equipment using techniques designed to enable radio communications in the same frequency channels on which co-located equipment specified by 5A001.h.1 is transmitting.

*N.B.: See also Category XI of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).*

i. [Reserved]

*N.B.: See 5A001.f.1 for items previously specified by 5A001.i.*

■ 35. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 1, ECCN 5B001 is revised to read as follows:

**5B001 Telecommunication test, inspection and production equipment, ''components'' and ''accessories,'' as follows (See List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $5000
*GBS:* Yes
*CIV:* Yes

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship 5B001.a equipment and ''specially designed'' ''components'' or ''accessories'' therefor, ''specially designed'' for the ''development,'' or ''production'' of equipment, functions or features specified by in ECCN 5A001.b.3, .b.5 or .h to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* See also 5B991.
*Related Definition:* N/A
*Items:*

a. Equipment and ''specially designed'' ''components'' or ''accessories'' therefor, ''specially designed'' for the ''development'' or ''production'' of equipment, functions or features, controlled by 5A001;

**Note:** 5B001.a does not apply to optical fiber characterization equipment.

b. Equipment and ''specially designed'' ''components'' or ''accessories'' therefor, ''specially designed'' for the ''development'' of any of the following telecommunication transmission or switching equipment:

b.1. [Reserved]

b.2. Equipment employing a ''laser'' and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm; *or*

b.2.b. [Reserved]

b.2.c. [Reserved]

b.2.d. Employing analog techniques and having a bandwidth exceeding 2.5 GHz; or

**Note:** 5B001.b.2.d. does not include equipment ''specially designed'' for the ''development'' of commercial TV systems.

b.3. [Reserved]

b.4. Radio equipment employing Quadrature-Amplitude-Modulation (QAM) techniques above level 1,024.

■ 36. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 1, ECCN 5E001 is revised to read as follows:

**5E001 ''Technology'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, SL, AT

| *Control(s)* | *Country chart (see Supp. No.1 to part 738)* |
|---|---|
| NS applies to entire entry | NS Column 1 |
| SL applies to ''technology'' for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.f.1, or for the ''development'' or ''production'' of ''software'' controlled by ECCN 5D001.a (for 5A001.f.1). | A license is required for all destinations, as specified in § 742.13 of the EAR. Accordingly, a column specific to this control does not appear on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR)<br>**Note to SL paragraph:** *This licensing requirement does not supersede, nor does it implement, construe or limit the scope of any criminal statute, including, but not limited to the Omnibus Safe Streets Act of 1968, as amended* |
| AT applies to entire entry | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* Yes, except for exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''technology'' controlled by 5E001.a for the ''development'' or ''production'' of the following:

(1) Items controlled by 5A001.b.5 or 5A001.h; or

(2) ''Software'' controlled by 5D001.a that is ''specially designed'' for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.b.5 or 5A001.h.

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment, functions or features specified by 5A001.b.3, .b.5 or .h; or for ''software'' in 5D001.a that is specified in the STA paragraph in the License Exception section of ECCN 5D001 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* (1) See also 5E101, 5E980 and 5E991. (2) ''Technology'' for ''development'' or ''production'' of ''Monolithic Microwave Integrated Circuit'' (''MMIC'') amplifiers that meet the control criteria given at 3A001.b.2 is controlled in 3E001; 5E001.d refers only to that additional ''technology'' ''required'' for telecommunications.
*Related Definitions:* N/A
*Items:*

a. ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' (excluding operation) of equipment, functions or features, controlled by 5A001 or ''software'' controlled by 5D001.a..

b. Specific ''technology'', as follows:

b.1. ''Technology'' ''required'' for the ''development'' or ''production'' of telecommunications equipment ''specially designed'' to be used on board satellites;

b.2. ''Technology'' for the ''development'' or ''use'' of ''laser'' communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. ''Technology'' for the ''development'' of digital cellular radio base station receiving equipment whose reception capabilities that allow multi-band, multi-channel, multi-mode, multi-coding algorithm or multi-protocol operation can be modified by changes in ''software'';

b.4. ''Technology'' for the ''development'' of ''spread spectrum'' techniques, including ''frequency hopping'' techniques.

**Note:** 5E001.b.4 does not apply to ''technology'' for the ''development'' of any of the following:

a. Civil cellular radio-communications systems; or

b. Fixed or mobile satellite Earth stations for commercial civil telecommunications.

c. ''Technology'' according the General Technology Note for the ''development'' or ''production'' of any of the following:

c.1. [Reserved]

c.2. Equipment employing a ''laser'' and having any of the following:

c.2.a. A transmission wavelength exceeding 1,750 nm;

c.2.b. [Reserved]

c.2.c. [Reserved]

c.2.d. Employing wavelength division multiplexing techniques of optical carriers at less than 100 GHz spacing; *or*

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

**Note:** 5E001.c.2.e does not control ''technology'' for commercial TV systems.

*N.B.: For ''technology'' for the ''development'' or ''production'' of non-telecommunications equipment employing a ''laser'', see Product Group E of Category 6, e.g., 6E00x*

c.3. Equipment employing ''optical switching'' and having a switching time less than 1 ms; *or*

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-Amplitude-Modulation (QAM) techniques above level 1,024; *or*

c.4.b. Operating at input or output frequencies exceeding 31.8 GHz; *or*

**Note:** 5E001.c.4.b does not control ''technology'' for equipment designed or modified for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

c.4.c. Operating in the 1.5 MHz to 87.5 MHz band and incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal; *or*

c.5. [Reserved]

c.6. Mobile equipment having all of the following:

c.6.a. Operating at an optical wavelength greater than or equal to 200nm and less than or equal to 400nm; *and*

c.6.b. Operating as a ''local area network'';

d. ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of ''Monolithic Microwave

Integrated Circuit'' (''MMIC'') amplifiers ''specially designed'' for telecommunications and that are any of the following:

**Technical Note:** For purposes of 5E001.d, the parameter peak saturated power output may also be referred to on product data sheets as output power, saturated power output, maximum power output, peak power output, or peak envelope power output.

*d.1. Rated for operation at frequencies exceeding 2.7 GHz up to and including 6.8 GHz with a ''fractional bandwidth'' greater than 15%, and having any of the following:*

d.1.a. A peak saturated power output greater than 75 W (48.75 dBm) at any frequency exceeding 2.7 GHz up to and including 2.9 GHz;

d.1.b. A peak saturated power output greater than 55 W (47.4 dBm) at any frequency exceeding 2.9 GHz up to and including 3.2 GHz;

d.1.c. A peak saturated power output greater than 40 W (46 dBm) at any frequency exceeding 3.2 GHz up to and including 3.7 GHz; *or*

d.1.d. A peak saturated power output greater than 20 W (43 dBm) at any frequency exceeding 3.7 GHz up to and including 6.8 GHz;

d.2. Rated for operation at frequencies exceeding 6.8 GHz up to and including 16 GHz with a ''fractional bandwidth'' greater than 10%, and having any of the following:

d.2.a. A peak saturated power output greater than 10W (40 dBm) at any frequency exceeding 6.8 GHz up to and including 8.5 GHz; or

d.2.b. A peak saturated power output greater than 5W (37 dBm) at any frequency exceeding 8.5 GHz up to and including 16 GHz;

d.3. Rated for operation with a peak saturated power output greater than 3 W (34.77 dBm) at any frequency exceeding 16 GHz up to and including 31.8 GHz, and with a ''fractional bandwidth'' of greater than 10%;

d.4. Rated for operation with a peak saturated power output greater than 0.1n W (−70 dBm) at any frequency exceeding 31.8 GHz up to and including 37 GHz;

d.5. Rated for operation with a peak saturated power output greater than 1 W (30 dBm) at any frequency exceeding 37 GHz up to and including 43.5 GHz, and with a ''fractional bandwidth'' of greater than 10%;

d.6. Rated for operation with a peak saturated power output greater than 31.62 mW (15 dBm) at any frequency exceeding 43.5 GHz up to and including 75 GHz, and with a ''fractional bandwidth'' of greater than 10%;

d.7. Rated for operation with a peak saturated power output greater than 10 mW (10 dBm) at any frequency exceeding 75 GHz up to and including 90 GHz, and with a ''fractional bandwidth'' of greater than 5%; or

d.8. Rated for operation with a peak saturated power output greater than 0.1 nW (−70 dBm) at any frequency exceeding 90 GHz;

e. ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of electronic devices and circuits, ''specially designed'' for telecommunications and containing ''components'' manufactured from ''superconductive'' materials, ''specially designed'' for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents and having any of the following:

e.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than $10^{-14}$ J; *or*

e.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000.

■ 37. In Supplement No. 1 to part 774 (the Commerce Control List), Category5—Part 2 is amended by revising the Notes at the beginning of Part 2 to read as follows:

**Part 2—Information Security**

**Note 1:** [Reserved]

**Note 2:** Category 5—Part 2, ''information security'' products, when accompanying their user for the user's personal use or as tools of trade, are eligible for License Exceptions TMP or BAG, subject to the terms and conditions of these license exceptions.

**Note 3:** Cryptography Note: ECCNs 5A002, 5D002.a.1, .b, and .c.1, do not control items as follows:

a. Items meeting all of the following:

1. Generally available to the public by being sold, without restriction, from stock at retail selling points by means of any of the following:

a. Over-the-counter transactions;

b. Mail order transactions;

c. Electronic transactions; or

d. Telephone call transactions;

2. The cryptographic functionality cannot be easily changed by the user;

3. Designed for installation by the user without further substantial support by the supplier; and

4. When necessary, details of the items are accessible and will be provided, upon request, to the appropriate authority in the exporter's country in order to ascertain compliance with conditions described in paragraphs a.1 through a.3 of this Note;

b. Hardware components or 'executable software', of existing items described in paragraph a. of this Note, that have been designed for these existing items, and meeting all of the following:

1. ''Information security'' is not the primary function or set of functions of the component or 'executable software';

2. The component or 'executable software' does not change any cryptographic functionality of the existing items, or add new cryptographic functionality to the existing items;

3. The feature set of the component or 'executable software' is fixed and is not designed or modified to customer specification; and

4. When necessary, as determined by the appropriate authority in the exporter's country, details of the component or 'executable software', and details of relevant end-items are accessible and will be provided to the authority upon request, in order to ascertain compliance with conditions described above.

**Technical Note:** For the purpose of the Cryptography Note, 'executable software' means ''software'' in executable form, from an existing hardware component excluded from 5A002, by the Cryptography Note.

**Note:** 'Executable software' does not include complete binary images of the ''software'' running on an end-item.

**Note to the Cryptography Note:**

1. To meet paragraph a. of Note 3, all of the following must apply:

a. The item is of potential interest to a wide range of individuals and businesses; *and*

b. The price and information about the main functionality of the item are available before purchase without the need to consult the vendor or supplier. A simple price inquiry is not considered to be a consultation.

2. In determining eligibility of paragraph a. of Note 3, BIS may take into account relevant factors such as quantity, price, required technical skill, existing sales channels, typical customers, typical use or any exclusionary practices of the supplier.

**N.B. to Note 3 (Cryptography Note):** You must submit a classification request or self-classification report to BIS for mass market encryption commodities and software eligible for the Cryptography Note employing a key length greater than 64 bits for the symmetric algorithm (or, for commodities and software not implementing any symmetric algorithms, employing a key length greater than 768 bits for asymmetric algorithms or greater than 128 bits for elliptic curve algorithms) in accordance with the requirements of § 740.17(b) of the EAR in order to be released from the ''EI'' and ''NS'' controls of ECCN 5A002 or 5D002.

■ 38. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2, ECCN 5A002 is revised to read as follows:

**5A002 ''Information security'' systems, equipment and ''components,'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT, EI

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| AT applies to entire entry. | AT Column 1 |
| EI applies to entire entry | Refer to § 742.15 of the EAR |

**License Requirements Note:** See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and

''technology'' for the ''production'' or ''development'' of such microprocessors.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* Yes: $500 for ''components''. N/A for systems and equipment.
*GBS:* N/A
*CIV:* N/A
*ENC:* Yes for certain EI controlled commodities, see § 740.17 of the EAR for eligibility.

**List of Items Controlled**

*Related Controls:* (1) ECCN 5A002.a controls ''components'' providing the means or functions necessary for ''information security.'' All such ''components'' are presumptively ''specially designed'' and controlled by 5A002.a. (2) See USML Categories XI (including XI(b)) and XIII(b) (including XIII(b)(2)) for controls on systems, equipment, and components described in 5A002.d or .e that are subject to the ITAR. (3) For Global Navigation Satellite Systems (GNSS) receiving equipment containing or employing decryption see 7A005, and for related decryption ''software'' and ''technology'' see 7D005 and 7E001. (4) Noting that items may be controlled elsewhere on the CCL, examples of items not controlled by ECCN 5A002.a.4 include the following: (a) An automobile where the only 'cryptography for data confidentiality' 'in excess of 56 bits of symmetric key length, or equivalent' is performed by a Category 5—Part 2 Note 3 eligible mobile telephone that is built into the car. In this case, secure phone communications support a non-primary function of the automobile but the mobile telephone (equipment), as a standalone item, is not controlled by ECCN 5A002 because it is excluded by the Cryptography Note (Note 3) (See ECCN 5A992.c). (b) An exercise bike with an embedded Category 5—Part 2 Note 3 eligible web browser, where the only controlled cryptography is performed by the web browser. In this case, secure web browsing supports a non-primary function of the exercise bike but the web browser (''software''), as a standalone item, is not controlled by ECCN 5D002 because it is excluded by the Cryptography Note (Note 3) (See ECCN 5D992.c). (5) After classification or self-classification in accordance with § 740.17(b) of the EAR, mass market encryption commodities that meet eligibility requirements are released from ''EI'' and ''NS'' controls. These commodities are designated 5A992.c.
*Related Definitions:* N/A
*Items:*

a. Designed or modified to use 'cryptography for data confidentiality' having 'in excess of 56 bits of symmetric key length, or equivalent', where that cryptographic capability is usable without ''cryptographic activation'' or has been activated, as follows:

a.1. Items having ''information security'' as a primary function;

a.2. Digital communication or networking systems, equipment or components, not specified in paragraph 5A002.a.1;

a.3. Computers, other items having information storage or processing as a primary function, and components therefor, not specified in paragraphs 5A002.a.1 or .a.2;

*N.B.: For operating systems see also 5D002.a.1 and .c.1.*

a.4. Items, not specified in paragraphs 5A002.a.1 to a.3, where the 'cryptography for data confidentiality' having 'in excess of 56 bits of symmetric key length, or equivalent' meets all of the following:

a.4.a. It supports a non-primary function of the item; *and*

a.4.b. It is performed by incorporated equipment or ''software'' that would, as a standalone item, be specified by ECCNs 5A002, 5A003, 5A004, 5B002 or 5D002.

*N.B. to paragraph a.4: See Related Control Paragraph (4) of this ECCN 5A002 for examples of items not controlled by 5A002.a.4.*

**Technical Notes:** 1. For the purposes of 5A002.a, 'cryptography for data confidentiality' means ''cryptography'' that employs digital techniques and performs any cryptographic function other than any of the following:

1.a. ''Authentication;''

1.b. Digital signature;

1.c. Data integrity;

1.d. Non-repudiation;

1.e. Digital rights management, including the execution of copy-protected ''software;''

1.f. Encryption or decryption in support of entertainment, mass commercial broadcasts or medical records management; *or*

1.g. Key management in support of any function described in paragraphs 1.a to 1.f of this Technical Note paragraph 1.

2. For the purposes of 5A002.a, 'in excess of 56 bits of symmetric key length, or equivalent' means any of the following:

2.a. A ''symmetric algorithm'' employing a key length in excess of 56 bits, not including parity bits; *or*

2.b. An ''asymmetric algorithm'' where the security of the algorithm is based on any of the following:

2.b.1. Factorization of integers in excess of 512 bits (*e.g.,* RSA);

2.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (*e.g.,* Diffie-Hellman over Z/pZ); *or*

2.b.3. Discrete logarithms in a group other than mentioned in paragraph 2.b.2 of this Technical Note in excess of 112 bits (*e.g.,* Diffie-Hellman over an elliptic curve).

**Note 1:** Details of items must be accessible and provided upon request, in order to establish any of the following:

a. Whether the item meets the criteria of 5A002.a.1 to a.4; *or*

b. Whether the cryptographic capability for data confidentiality specified by 5A002.a is usable without ''cryptographic activation.''

**Note 2:** 5A002.a does not control any of the following items, or specially designed ''information security'' components therefor:

a. Smart cards and smart card 'readers/writers' as follows:

a.1. A smart card or an electronically readable personal document (*e.g.,* token coin, e-passport) that meets any of the following:

a.1.a. The cryptographic capability meets all of the following:

a.1.a.1. It is restricted for use in any of the following:

a.1.a.1.a. Equipment or systems, not described by 5A002.a.1 to a.4;

a.1.a.1.b. Equipment or systems, not using 'cryptography for data confidentiality' having 'in excess of 56 bits of symmetric key length, or equivalent;' *or*

a.1.a.1.c. Equipment or systems, excluded from 5A002.a by entries b. to f. of this Note; and

a.1.a.2. It cannot be reprogrammed for any other use; *or*

a.1.b. Having all of the following:

a.1.b.1. It is specially designed and limited to allow protection of 'personal data' stored within;

a.1.b.2. Has been, or can only be, personalized for public or commercial transactions or individual identification; *and*

a.1.b.3. Where the cryptographic capability is not user-accessible;

**Technical Note to paragraph a.1.b of Note 2:** 'Personal data' includes any data specific to a particular person or entity, such as the amount of money stored and data necessary for ''authentication.''

a.2. 'Readers/writers' specially designed or modified, and limited, for items specified by paragraph a.1 of this Note;

**Technical Note to paragraph a.2 of Note 2:** 'Readers/writers' include equipment that communicates with smart cards or electronically readable documents through a network.

b. Cryptographic equipment specially designed and limited for banking use or 'money transactions';

**Technical Note to paragraph b. of Note 2:** 'Money transactions' in 5A002 Note 2 paragraph b. includes the collection and settlement of fares or credit functions.

c. Portable or mobile radiotelephones for civil use (*e.g.,* for use with commercial civil cellular radio communication systems) that are not capable of transmitting encrypted data directly to another radiotelephone or equipment (other than Radio Access Network (RAN) equipment), nor of passing encrypted data through RAN equipment (*e.g.,* Radio Network Controller (RNC) or Base Station Controller (BSC));

d. Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*i.e.,* a single, unrelayed hop between terminal and home base station) is less than 400 meters according to the manufacturer's specifications;

e. Portable or mobile radiotelephones and similar client wireless devices for civil use, that implement only published or commercial cryptographic standards (except for anti-piracy functions, which may be non-published) and also meet the provisions of paragraphs a.2 to a.4 of the Cryptography Note (Note 3 in Category 5—Part 2), that have been customized for a specific civil industry application with features that do not affect the cryptographic functionality of these original non-customized devices;

f. Items, where the ''information security'' functionality is limited to wireless ''personal area network'' functionality, meeting all of the following:

f.1. Implement only published or commercial cryptographic standards; and

f.2. The cryptographic capability is limited to a nominal operating range not exceeding 30 meters according to the manufacturer's specifications, or not exceeding 100 meters according to the manufacturer's specifications for equipment that cannot interconnect with more than seven devices;

g. Mobile telecommunications Radio Access Network (RAN) equipment designed for civil use, which also meet the provisions of paragraphs a.2 to a.4 of the Cryptography Note (Note 3 in Category 5—Part 2), having an RF output power limited to 0.1W (20 dBm) or less, and supporting 16 or fewer concurrent users;

h. Routers, switches or relays, where the ''information security'' functionality is limited to the tasks of ''Operations, Administration or Maintenance'' (''OAM'') implementing only published or commercial cryptographic standards; *or*

i. General purpose computing equipment or servers, where the ''information security'' functionality meets all of the following:

i.1. Uses only published or commercial cryptographic standards; *and*

i.2. Is any of the following:

i.2.a. Integral to a CPU that meets the provisions of Note 3 in Category 5—Part 2;

i.2.b. Integral to an operating system that is not specified by 5D002; *or*

i.2.c. Limited to ''OAM'' of the equipment.

b. Designed or modified to enable, by means of ''cryptographic activation,'' an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a that would not otherwise be enabled;

c. Designed or modified to use or perform ''quantum cryptography;''

**Technical Note:** ''Quantum cryptography'' is also known as Quantum Key Distribution (QKD).

d. Designed or modified to use cryptographic techniques to generate channelizing codes, scrambling codes or network identification codes, for systems using ultra-wideband modulation techniques and having any of the following:

d.1. A bandwidth exceeding 500 MHz; *or*

d.2. A ''fractional bandwidth'' of 20% or more;

e. Designed or modified to use cryptographic techniques to generate the spreading code for ''spread spectrum'' systems, not specified by 5A002.d, including the hopping code for ''frequency hopping'' systems.

■ 39. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2, ECCN 5A003 is revised to read as follows:

**5A003 ''Systems,'' ''equipment'' and ''components,'' for non-cryptographic ''information security,'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| AT applies to entire entry. | AT Column 1 |

**License Requirements Note:** See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A

*TSR:* N/A

*ENC:* Yes for certain EI controlled software, see § 740.17 of the EAR for eligibility.

**List of Items Controlled**

*Related Controls:* After classification or self-classification in accordance with § 740.17(b) of the EAR, mass market encryption software that meet eligibility requirements are released from ''EI'' and ''NS'' controls. This software is designated as 5D992.c.

*Related Definitions:* 5D002.a controls ''software'' designed or modified to use ''cryptography'' employing digital or analog techniques to ensure ''information security.''

*Items:*

a. ''Software'' ''specially designed'' or modified for the ''development,'' ''production'' or ''use'' of any of the following:

a.1. Equipment specified by 5A002 or ''software'' specified by 5D002.c.1;

a.2. Equipment specified by 5A003 or ''software'' specified by 5D002.c.2; *or*

a.3. Equipment specified by 5A004 or ''software'' specified by 5D002.c.3;

b. ''Software'' designed or modified to enable, by means of ''cryptographic activation,'' an item to meet the criteria for functionality specified by 5A002.a, that would not otherwise be met;

c. ''Software'' having the characteristics of, or performing or simulating the functions of, any of the following:

c.1. Equipment specified by 5A002.a, .c, .d or .e;

**Note:** 5D002.c.1 does not apply to ''software'' limited to the tasks of ''OAM'' implementing only published or commercial cryptographic standards.

c.2. Equipment specified by 5A003; *or*

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* Yes: $500 for ''components.''
N/A for systems and equipment.

*GBS:* N/A

*CIV:* N/A

**List of Items Controlled**

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:*

a. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion;

**Note:** 5A003.a applies only to physical layer security. For the purpose of 5A003.a, the physical layer includes Layer 1 of the Reference Model of Open Systems Interconnection (OSI) (ISO/IEC 7498–1).

b. ''Specially designed'' or modified to reduce the compromising emanations of information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards.

■ 40. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2, ECCN 5D002 is revised to read as follows:

**5D002 ''Software'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT, EI

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry | NS Column 1 |
| AT applies to entire entry | AT Column 1 |
| EI applies to ''software'' in 5D002.a.1, a.3, .b, c.1 and c.3, for commodities or ''software'' controlled for EI reasons in ECCNs 5A002, 5A004 or 5D002. | Refer to § 742.15 of the EAR<br>**Note:** Encryption software is controlled because of its functional capacity, and not because of any informational value of such software; such software is not accorded the same treatment under the EAR as other ''software'; and for export licensing purposes, encryption software is treated under the EAR in the same manner as a commodity included in ECCN 5A002 |

c.3. Equipment specified by 5A004.

d. [Reserved]

*N.B.: See 5D002.b for items formerly specified in 5D002.d.*

■ 41. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Part 2, ECCN 5E002 is revised to read as follows:

**5E002 ''Technology'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT, EI

| *Control(s)* | *Country chart* (See Supp. No. 1 to part 738) |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| AT applies to entire entry. | AT Column 1 |
| EI applies to ''technology'' in 5E002.a for commodities or ''software'' controlled for EI reasons in ECCNs 5A002, 5A004 or 5D002, and to ''technology'' in 5E002.b. | Refer to § 742.15 of the EAR |

**License Requirements Notes:**

(1) See § 744.17 of the EAR for additional license requirements for microprocessors having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating ''information security'' functionality, and associated ''software'' and ''technology'' for the ''production'' or ''development'' of such microprocessors.

(2) When a person performs or provides technical assistance that incorporates, or otherwise draws upon, ''technology'' that was either obtained in the United States or is of US-origin, then a release of the ''technology'' takes place. Such technical assistance, when rendered with the intent to aid in the ''development'' or ''production'' of encryption commodities or software that would be controlled for ''EI'' reasons under ECCN 5A002, 5A004 or 5D002, may require authorization under the EAR even if the underlying encryption algorithm to be implemented is from the public domain or is not of U.S.-origin.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A

*TSR:* N/A

*ENC:* Yes for certain EI controlled technology, see § 740.17 of the EAR for eligibility.

**List of Items Controlled**

*Related Controls:* See also 5E992. This entry does not control ''technology'' ''required'' for the ''use'' of equipment excluded from control under the Related Controls paragraph or the Technical Notes in ECCN 5A002 or ''technology'' related to equipment excluded from control under ECCN 5A002.

*Related Definitions:* N/A

*Items:*

a. ''Technology'' according to the General Technology Note for the ''development,'' ''production'' or ''use'' of equipment controlled by 5A002, 5A003, 5A004 or 5B002, or of ''software'' controlled by 5D002.a or 5D002.c.

b. ''Technology'' to enable, by means of ''cryptographic activation,'' an item to meet the criteria for functionality specified by 5A002.a, that would not otherwise be met.

**Note:** 5E002 includes ''information security'' technical data resulting from procedures carried out to evaluate or determine the implementation of functions, features or techniques specified in Category 5—Part 2.

■ 42. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6A001 is revised to read as follows:

**6A001 Acoustic systems, equipment and ''components,'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $3000; N/A for 6A001.a.1.b.1 object detection and location systems having a transmitting frequency below 5 kHz or a sound pressure level exceeding 210 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 30 kHz to 2 kHz inclusive; 6A001.a.1.e, 6A001.a.2.a.1, a.2.a.2, 6A001.a.2.a.3, a.2.a.5, a.2.a.6, 6A001.a.2.b; processing equipment controlled by 6A001.a.2.c, and ''specially designed'' for real-time application with towed acoustic hydrophone arrays; a.2.e.1, a.2.e.2; and bottom or bay cable systems controlled by 6A001.a.2.f and having processing equipment ''specially designed'' for real-time application with bottom or bay cable systems.

*GBS:* Yes for 6A001.a.1.b.4.

*CIV:* Yes for 6A001.a.1.b.4.

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship commodities in 6A001.a.1.b, 6A001.a.1.e or 6A001.a.2 (except .a.2.a.4) to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* See also *6A991*

*Related Definitions:* N/A

*Items:*

a. Marine acoustic systems, equipment and ''specially designed'' ''components'' therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems, equipment and ''specially designed'' ''components'' therefor, as follows:

**Note:** 6A001.a.1 does not control equipment as follows:

a. Depth sounders operating vertically below the apparatus, not including a scanning function exceeding ± 20°, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding;

b. Acoustic beacons, as follows:

1. Acoustic emergency beacons;

2. Pingers ''specially designed'' for relocating or returning to an underwater position.

a.1.a. Acoustic seabed survey equipment as follows:

a.1.a.1. Surface vessel survey equipment designed for sea bed topographic mapping and having all of the following:

a.1.a.1.a. Designed to take measurements at an angle exceeding 20° from the vertical;

a.1.a.1.b. Designed to measure seabed topography at seabed depths exceeding 600 m;

a.1.a.1.c.'Sounding resolution' less than 2; and

a.1.a.1.d. 'Enhancement' of the depth ''accuracy'' through compensation for all the following:

a.1.a.1.d.1. Motion of the acoustic sensor;

a.1.a.1.d.2. In-water propagation from sensor to the seabed and back; and

a.1.a.1.d.3. Sound speed at the sensor;

**Technical Notes:**

1. 'Sounding resolution' is the swath width (degrees) divided by the maximum number of soundings per swath.

2. 'Enhancement' includes the ability to compensate by external means.

a.1.a.2. Underwater survey equipment designed for seabed topographic mapping and having any of the following:

**Technical Note:** The acoustic sensor pressure rating determines the depth rating of the equipment specified by 6A001.a.1.a.2.

a.1.a.2.a. Having all of the following:

a.1.a.2.a.1. Designed or modified to operate at depths exceeding 300 m; and

a.1.a.2.a.2. 'Sounding rate' greater than 3,800 m/s; *or*

**Technical Note:** 'Sounding rate' is the product of the maximum speed (m/s) at which the sensor can operate and the maximum number of soundings per swath assuming 100% coverage. For systems that produce soundings in two directions (3D sonars), the maximum of the 'sounding rate' in either direction should be used.

a.1.a.2.b. Survey equipment, not specified by 6A001.a.1.a.2.a, having all of the following:

a.1.a.2.b.1. Designed or modified to operate at depths exceeding 100 m;

a.1.a.2.b.2. Designed to take measurements at an angle exceeding 20° from the vertical;

a.1.a.2.b.3. Having any of the following:

a.1.a.2.b.3.a. Operating frequency below 350 kHz; *or*

a.1.a.2.b.3.b. Designed to measure seabed topography at a range exceeding 200 m from the acoustic sensor; *and*

a.1.a.2.b.4. 'Enhancement' of the depth ''accuracy'' through compensation of all of the following:

a.1.a.2.b.4.a. Motion of the acoustic sensor;

a.1.a.2.b.4.b. In-water propagation from sensor to the seabed and back; *and*

a.1.a.2.b.4.c. Sound speed at the sensor.

a.1.a.3. Side Scan Sonar (SSS) or Synthetic Aperture Sonar (SAS), designed for seabed imaging and having all of the following, and specially designed transmitting and receiving acoustic arrays therefor:

a.1.a.3.a. Designed or modified to operate at depths exceeding 500 m; and

a.1.a.3.b. An 'area coverage rate' of greater than 570 $m^2/s$ while operating at the maximum range that it can operate with an 'along track resolution' of less than 15 cm; *and*

a.1.a.3.c. An 'across track resolution' of less than 15 cm;

**Technical Notes:**

1. 'Area coverage rate' ($m^2/s$) is twice the product of the sonar range (m) and the maximum speed (m/s) at which the sensor can operate at that range.

2. 'Along track resolution' (cm), for SSS only, is the product of azimuth (horizontal) beamwidth (degrees) and sonar range (m) and 0.873.

3. 'Across track resolution' (cm) is 75 divided by the signal bandwidth (kHz).

a.1.b Systems or transmitting and receiving arrays, designed for object detection or location, having any of the following:

a.1.b.1. A transmitting frequency below 10 kHz;

a.1.b.2. Sound pressure level exceeding 224dB (reference 1 µPa at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

a.1.b.3. Sound pressure level exceeding 235 dB (reference 1 µPa at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

a.1.b.5. Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

a.1.b.6. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

a.1.b.6.a. Dynamic compensation for pressure; *or*

a.1.b.6.b. Incorporating other than lead zirconate titanate as the transduction element;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination and having any of the following:

**Notes:**

1. The control status of acoustic projectors, including transducers, ''specially designed'' for other equipment is determined by the control status of the other equipment.

2. 6A001.a.1.c does not control electronic sources that direct the sound vertically only, or mechanical (*e.g.,* air gun or vapor-shock gun) or chemical (*e.g.,* explosive) sources.

3. Piezoelectric elements specified in 6A001.a.1.c include those made from lead-magnesium-niobate/lead-titanate ($Pb(Mg_{1/3}Nb_{2/3})O_3$-$PbTiO_3$, or PMN-PT) single crystals grown from solid solution or lead-indium-niobate/lead-magnesium niobate/lead-titanate ($Pb(In_{1/2}Nb_{1/2})O_3$-$Pb(Mg_{1/3}Nb_{2/3})O_3$-$PbTiO_3$, or PIN-PMN-PT) single crystals grown from solid solution.

a.1.c.1. Operating at frequencies below 10 kHz and having any of the following:

a.1.c.1.a. Not designed for continuous operation at 100% duty cycle and having a radiated 'free-field Source Level (SLRMS)' exceeding (10log(f) + 169.77)dB (reference 1 µPa at 1 m) where f is the frequency in Hertz of maximum Transmitting Voltage Response (TVR) below 10 kHz; *or*

a.1.c.1.b. Designed for continuous operation at 100% duty cycle and having a continuously radiated 'free-field Source Level (SLRMS)' at 100% duty cycle exceeding (10log(f) + 159.77)dB (reference 1 µPa at 1 m) where f is the frequency in Hertz of maximum Transmitting Voltage Response (TVR) below 10 kHz; *or*

**Technical Note:** The 'free-field Source Level ($SL_{RMS}$)' is defined along the maximum response axis and in the far field of the acoustic projector. It can be obtained from the Transmitting Voltage Response using the following equation: $SL_{RMS} = (TVR + 20\log V_{RMS})$ dB (ref 1µPa at 1 m), where $SL_{RMS}$ is the source level, TVR is the Transmitting Voltage Response and $V_{RMS}$ is the Driving Voltage of the Projector.

a.1.c.2. [Reserved]

*N.B. See 6A001.a.1.c.1 for items previously specified in 6A001.a.1.c.2.*

a.1.c.3. Side-lobe suppression exceeding 22 dB;

a.1.d. Acoustic systems and equipment, designed to determine the position of surface vessels or underwater vehicles and having all of the following, and ''specially designed'' ''components'' therefor:

a.1.d.1. Detection range exceeding 1,000 m; *and*

a.1.d.2. Determined position error of less than 10 m rms (root mean square) when measured at a range of 1,000 m;

**Note:** 6A001.a.1.d includes:

a. Equipment using coherent ''signal processing'' between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle;

b. Equipment capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

a.1.e. Active individual sonars, ''specially designed'' or modified to detect, locate and automatically classify swimmers or divers, having all of the following, and ''specially designed'' transmitting and receiving acoustic arrays therefor:

a.1.e.1. Detection range exceeding 530 m;

a.1.e.2. Determined position error of less than 15 m rms (root mean square) when measured at a range of 530 m; *and*

a.1.e.3. Transmitted pulse signal bandwidth exceeding 3 kHz;

*N.B.: For diver detection systems ''specially designed'' or modified for military use, see the U.S. Munitions List in the International Traffic in Arms Regulations (ITAR) (22 CFR part 121).*

**Note:** For 6A001.a.1.e, where multiple detection ranges are specified for various environments, the greatest detection range is used.

a.2. Passive systems, equipment and ''specially designed'' ''components'' therefor, as follows:

a.2.a. Hydrophones having any of the following:

**Note:** The control status of hydrophones ''specially designed'' for other equipment is determined by the control status of the other equipment.

**Technical Note:** Hydrophones consist of one or more sensing elements producing a single acoustic output channel. Those that contain multiple elements can be referred to as a hydrophone group.

a.2.a.1. Incorporating continuous flexible sensing elements;

a.2.a.2. Incorporating flexible assemblies of discrete sensing elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.3. Having any of the following sensing elements:

a.2.a.3.a. Optical fibers;

a.2.a.3.b. 'Piezoelectric polymer films' other than polyvinylidene-fluoride (PVDF) and its co-polymers {P(VDF-TrFE) and P(VDF-TFE)};

a.2.a.3.c. 'Flexible piezoelectric composites';

a.2.a.3.d. Lead-magnesium- niobate/lead-titanate (*i.e.,* $Pb(Mg_{1/3}Nb_{2/3})O_3$-$PbTiO_3$, or PMN-PT) piezoelectric single crystals grown from solid solution; *or*

a.2.a.3.e. Lead-indium-niobate/lead-magnesium niobate/lead-titanate (*i.e.,* $Pb(In_{1/2}Nb_{1/2})O_3$-$Pb(Mg_{1/3}Nb_{2/3})O_3$-$PbTiO_3$, or PIN-PMN-PT) piezoelectric single crystals grown from solid solution;

a.2.a.4. A 'hydrophone sensitivity' better than −180dB at any depth with no acceleration compensation;

a.2.a.5. Designed to operate at depths exceeding 35 m with acceleration compensation; *or*

a.2.a.6. Designed for operation at depths exceeding 1,000 m;

**Technical Notes:**

1. 'Piezoelectric polymer film' sensing elements consist of polarized polymer film that is stretched over and attached to a supporting frame or spool (mandrel).

2. 'Flexible piezoelectric composite' sensing elements consist of piezoelectric ceramic particles or fibers combined with an electrically insulating, acoustically transparent rubber, polymer or epoxy compound, where the compound is an integral part of the sensing elements.

3. 'Hydrophone sensitivity' is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms

reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field with an rms pressure of 1 μPa. For example, a hydrophone of −160 dB (reference 1 V per μPa) would yield an output voltage of $10^{-8}$ V in such a field, while one of −180 dB sensitivity would yield only $10^{-9}$ V output. Thus, −160 dB is better than −180 dB.

a.2.b. Towed acoustic hydrophone arrays having any of the following:

**Technical Note:** Hydrophones arrays consist of a number of hydrophones providing multiple acoustic output channels.

a.2.b.1. Hydrophone group spacing of less than 12.5 m or 'able to be modified' to have hydrophone group spacing of less than 12.5 m;

a.2.b.2. Designed or 'able to be modified' to operate at depths exceeding 35m;

**Technical Note:** 'Able to be modified' in 6A001.a.2.b means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: Spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Heading sensors controlled by 6A001.a.2.d;

a.2.b.4. Longitudinally reinforced array hoses;

a.2.b.5. An assembled array of less than 40 mm in diameter;

a.2.b.6. [Reserved];

a.2.b.7. Hydrophone characteristics controlled by 6A001.a.2.a; *or*

a.2.b.8. Accelerometer-based hydro-acoustic sensors specified by 6A001.a.2.g;

a.2.c. Processing equipment, ''specially designed'' for towed acoustic hydrophone arrays, having ''user-accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

a.2.d. Heading sensors having all of the following:

a.2.d.1. An ''accuracy'' of better than ± 0.5°; *and*

a.2.d.2. Designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m;

*N.B.: For inertial heading systems, see 7A003.c.*

a.2.e. Bottom or bay-cable hydrophone arrays having any of the following:

a.2.e.1. Incorporating hydrophones controlled by 6A001.a.2.a;

a.2.e.2. Incorporating multiplexed hydrophone group signal modules having all of the following characteristics:

a.2.e.2.a. Designed to operate at depths exceeding 35 m or having an adjustable or removal depth sensing device in order to operate at depths exceeding 35 m; *and*

a.2.e.2.b. Capable of being operationally interchanged with towed acoustic hydrophone array modules; *or*

a.2.e.3. Incorporating accelerometer-based hydro-acoustic sensors specified by 6A001.a.2.g;

a.2.f. Processing equipment, ''specially designed'' for bottom or bay cable systems, having ''user-accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

a.2.g. Accelerometer-based hydro-acoustic sensors having all of the following:

a.2.g.1. Composed of three accelerometers arranged along three distinct axes;

a.2.g.2. Having an overall 'acceleration sensitivity' better than 48 dB (reference 1,000 mV rms per 1g);

a.2.g.3. Designed to operate at depths greater than 35 meters; *and*

a.2.g.4. Operating frequency below 20 kHz;

**Note:** 6A001.a.2.g does not apply to particle velocity sensors or geophones.

**Note:** 6A001.a.2 also applies to receiving equipment, whether or not related in normal application to separate active equipment, and ''specially designed'' ''components'' therefor.

**Technical Notes:**

1. Accelerometer-based hydro-acoustic sensors are also known as vector sensors.

2. 'Acceleration sensitivity' is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydro-acoustic sensor, without a preamplifier, is placed in a plane wave acoustic field with an rms acceleration of 1 g (*i.e.,* 9.81 $m/s^2$).

b. Correlation-velocity and Doppler-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed, as follows:

b.1. Correlation-velocity sonar log equipment having any of the following characteristics:

b.1.a. Designed to operate at distances between the carrier and the sea bed exceeding 500 m; *or*

b.1.b. Having speed ''accuracy'' better than 1% of speed;

b.2. Doppler-velocity sonar log equipment having speed ''accuracy'' better than 1% of speed;

**Note 1:** 6A001.b does not apply to depth sounders limited to any of the following:

a. Measuring the depth of water;

b. Measuring the distance of submerged or buried objects; *or*

c. Fish finding.

**Note 2:** 6A001.b does not apply to equipment ''specially designed'' for installation on surface vessels.

c. [Reserved]

*N.B.: For diver deterrent acoustic systems, see 8A002.r.*

■ 43. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6A003 is revised to read as follows:

**6A003 Cameras, systems or equipment, and ''components'' therefor, as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, NP, RS, AT, UN

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry | NS Column 2 |
| NP applies to cameras controlled by 6A003.a.2, a.3 or a.4 and to plug-ins in 6A003.a.6 for cameras controlled by 6A003.a.3 or a.4. | NP Column 1 |
| RS applies to 6A003.b.3, 6A003.b.4.a, 6A003.b.4.c and to items controlled in 6A003.b.4.b that have a frame rate greater than 60 Hz or that incorporate a focal plane array with more than 111,000 elements, or to items in 6A003.b.4.b when being exported or reexported to be embedded in a civil product. (But see § 742.6(a)(2)(iii) and (v) for certain exemptions). | RS Column 1 |
| RS applies to items controlled in 6A003.b.4.b that have a frame rate of 60 Hz or less and that incorporate a focal plane array with not more than 111,000 elements if not being exported or reexported to be embedded in a civil product. | RS Column 2 |
| AT applies to entire entry | AT Column 1 |
| UN applies to 6A003.b.3 and b.4 | See § 746.1(b) for UN controls. |

**License Requirement Note:** Commodities that are not subject to the ITAR but are of the type described in USML Category XII(c) are controlled as cameras in ECCN 6A003 when they incorporate a camera controlled in this ECCN.

**Reporting Requirements**

See § 743.3 of the EAR for thermal camera reporting for exports that are not

authorized by an individually validated license of thermal imaging cameras controlled by ECCN 6A003.b.4.b to destinations in Country Group A:1 (see Supplement No. 1 to part 740), must be reported to BIS.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $1500, except N/A for 6A003.a.2 through a.6, b.1, b.3 and b.4
*GBS:* Yes for 6A003.a.1
*CIV:* Yes for 6A003.a.1

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship any commodity in 6A003.b.3 or b.4 to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* (1) See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry. (2) Also see ECCN 6A203. (3) See ECCN 0A919 for foreign made military commodities that incorporate cameras described in 6A003. (4) Section 744.9 imposes a license requirement on cameras described in 6A003 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into a commodity controlled by ECCN 0A919. (5) See USML Category XII(c) and (e) for cameras subject to the ITAR.
*Related Definitions:* N/A
Items:

a. Instrumentation cameras and ''specially designed'' ''components'' therefor, as follows:

**Note:** Instrumentation cameras, controlled by 6A003.a.3 to 6A003.a.5, with modular structures should be evaluated by their maximum capability, using plug-ins available according to the camera manufacturer's specifications.

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

**Note:** 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras as follows:

a.3.a. Mechanical streak cameras having writing speeds exceeding 10 mm/μs;

a.3.b. Electronic streak cameras having temporal resolution better than 50 ns;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1μs per full frame; *and*

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second;

a.6. Plug-ins having all of the following characteristics:

a.6.a. ''Specially designed'' for instrumentation cameras which have modular structures and that are controlled by 6A003.a; *and*

a.6.b. Enabling these cameras to meet the characteristics specified by 6A003.a.3, 6A003.a.4 or 6A003.a.5, according to the manufacturer's specifications;

b. Imaging cameras as follows:

**Note:** 6A003.b does not control television or video cameras ''specially designed'' for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having a peak response in the wavelength range exceeding 10 nm, but not exceeding 30,000 nm and having all of the following:

b.1.a. Having any of the following:

b.1.a.1. More than $4 \times 10^6$ ''active pixels'' per solid state array for monochrome (black and white) cameras;

b.1.a.2. More than $4 \times 10^6$ ''active pixels'' per solid state array for color cameras incorporating three solid state arrays; *or*

b.1.a.3. More than $12 \times 10^6$ ''active pixels'' for solid state array color cameras incorporating one solid state array; *and*

b.1.b. Having any of the following:

b.1.b.1. Optical mirrors controlled by 6A004.a.;

b.1.b.2. Optical control equipment controlled by 6A004.d.; *or*

b.1.b.3. The capability for annotating internally generated 'camera tracking data';

**Technical Notes:**

1. For the purposes of this entry, digital video cameras should be evaluated by the maximum number of ''active pixels'' used for capturing moving images.

2. For the purpose of this entry, 'camera tracking data' is the information necessary to define camera line of sight orientation with respect to the earth. This includes: (1) The horizontal angle the camera line of sight makes with respect to the earth's magnetic field direction and; (2) the vertical angle between the camera line of sight and the earth's horizon.

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. A peak response in the wavelength range exceeding 10 nm, but not exceeding 30,000 nm;

b.2.b. Linear detector arrays with more than 8,192 elements per array; *and*

b.2.c. Mechanical scanning in one direction;

**Note:** 6A003.b.2 does not apply to scanning cameras and scanning camera systems, ''specially designed'' for any of the following:

a. Industrial or civilian photocopiers;

b. Image scanners ''specially designed'' for civil, stationary, close proximity scanning applications (*e.g.,* reproduction of images or print contained in documents, artwork or photographs); *or*

c. Medical equipment.

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a or 6A002.a.2.b;

b.4. Imaging cameras incorporating ''focal plane arrays'' having any of the following:

b.4.a. Incorporating ''focal plane arrays'' controlled by 6A002.a.3.a to 6A002.a.3.e;

b.4.b. Incorporating ''focal plane arrays'' controlled by 6A002.a.3.f; *or*

b.4.c. Incorporating ''focal plane arrays'' controlled by 6A002.a.3.g;

**Note 1:** Imaging cameras described in 6A003.b.4 include ''focal plane arrays'' combined with sufficient ''signal processing'' electronics, beyond the read out integrated circuit, to enable as a minimum the output of an analog or digital signal once power is supplied.

**Note 2:** 6A003.b.4.a does not control imaging cameras incorporating linear ''focal plane arrays'' with 12 elements or fewer, not employing time-delay-and-integration within the element and designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment ''specially designed'' for laboratory use; *or*

e. Medical equipment.

**Note 3:** 6A003.b.4.b does not control imaging cameras having any of the following:

a. A maximum frame rate equal to or less than 9 Hz;

b. Having all of the following:

1. Having a minimum horizontal or vertical 'Instantaneous-Field-of-View (IFOV)' of at least 10 mrad (milliradians);

2. Incorporating a fixed focal-length lens that is not designed to be removed;

3. Not incorporating a 'direct view' display; *and*

**Technical Note:** 'Direct view' refers to an imaging camera operating in the infrared spectrum that presents a visual image to a human observer using a near-to-eye micro display incorporating any light-security mechanism.

4. Having any of the following:

a. No facility to obtain a viewable image of the detected field-of-view; *or*

b. The camera is designed for a single kind of application and designed not to be user modified; *or*

**Technical Note:**

'Instantaneous Field of View (IFOV)' specified in Note 3.b is the lesser figure of the 'Horizontal FOV' or the 'Vertical FOV'.

'Horizontal IFOV' = horizontal Field of View (FOV)/number of horizontal detector elements

'Vertical IFOV'= vertical Field of View (FOV)/number of vertical detector elements.

c. The camera is ''specially designed'' for installation into a civilian passenger land vehicle and having all of the following:

1. The placement and configuration of the camera within the vehicle are solely to assist the driver in the safe operation of the vehicle;

2. Is operable only when installed in any of the following:

a. The civilian passenger land vehicle for which it was intended and the vehicle weighs less than 4,500 kg (gross vehicle weight); *or*

b. A ''specially designed'', authorized maintenance test facility; *and*

3. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended.

**Note:** When necessary, details of the items will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 3.b.4 and Note 3.c in this Note to 6A003.b.4.b.

**Note 4:** 6A003.b.4.c does not apply to 'imaging cameras' having any of the following characteristics:

a. Having all of the following:

1. Where the camera is ''specially designed'' for installation as an integrated component into indoor and wall-plug-operated systems or equipment, limited by design for a single kind of application, as follows:

a. Industrial process monitoring, quality control, or analysis of the properties of materials;

b. Laboratory equipment ''specially designed'' for scientific research;

c. Medical equipment;

d. Financial fraud detection equipment; *and*

2. Is only operable when installed in any of the following:

a. The system(s) or equipment for which it was intended; *or*

b. A ''specially designed,'' authorized maintenance facility; *and*

3. Incorporates an active mechanism that forces the camera not to function when it is removed from the system(s) or equipment for which it was intended;

b. Where the camera is ''specially designed'' for installation into a civilian passenger land vehicle or passenger and vehicle ferries and having all of the following:

1. The placement and configuration of the camera within the vehicle or ferry are solely to assist the driver or operator in the safe operation of the vehicle or ferry;

2. Is only operable when installed in any of the following:

a. The civilian passenger land vehicle for which it was intended and the vehicle weighs less than 4,500 kg (gross vehicle weight);

b. The passenger and vehicle ferry for which it was intended and having a length overall (LOA) 65 m or greater; *or*

c. A ''specially designed'', authorized maintenance test facility; *and*

3. Incorporates an active mechanism that forces the camera not to function when it is removed from the vehicle for which it was intended;

c. Limited by design to have a maximum ''radiant sensitivity'' of 10 mA/W or less for wavelengths exceeding 760 nm, having all of the following:

1. Incorporating a response limiting mechanism designed not to be removed or modified; *and*

2. Incorporates an active mechanism that forces the camera not to function when the response limiting mechanism is removed; *and*

3. Not ''specially designed'' or modified for underwater use; *or*

d. Having all of the following:

1. Not incorporating a 'direct view' or electronic image display;

2. Has no facility to output a viewable image of the detected field of view;

3. The ''focal plane array'' is only operable when installed in the camera for which it was intended; *and*

4. The ''focal plane array'' incorporates an active mechanism that forces it to be permanently inoperable when removed from the camera for which it was intended.

**Note:** When necessary, details of the item will be provided, upon request, to the Bureau of Industry and Security in order to ascertain compliance with the conditions described in Note 4 above.

b.5. Imaging cameras incorporating solid-state detectors specified by 6A002.a.1.

■ 44. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6A005 is revised to read as follows:

**6A005 ''Lasers,'' ''components'' and optical equipment, as follows (see List of Items Controlled), excluding items that are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).**

**License Requirements**

*Reason for Control:* NS, NP, AT

| *Control(s)* | *Country chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| NP applies to lasers controlled by 6A005.a.2, a.3, a.4, b.2.b, b.3, b.4, b.6.c, c.1.b, c.2.b, d.2, d.3.c, or d.4.c that meet or exceed the technical parameters described in 6A205. | NP Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* N/A for NP items; $3,000 for all other item

*GBS:* Neodymium-doped (other than glass) ''lasers'' controlled by 6A005.b.6.d.2 (except 6A005.b.6.d.2.b) that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm, and an average or CW output power not exceeding 2kW, and operate in a pulse-excited, non-''Q-switched'' multiple-transverse mode, or in a continuously excited, multiple-transverse mode; Dye and Liquid Lasers controlled by 6A005.c.1, c.2 and c.3, except for a pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the ''pulse duration'' is less than 100 ns; CO ''lasers'' controlled by 6A005.d.2 having a CW maximum rated single or multimode output power not exceeding 10 kW; $CO_2$ or $CO/CO_2$ ''lasers'' controlled by 6A005.d.3 having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; $CO_2$ ''lasers'' controlled by 6A005.d.3 that operate in CW multiple-transverse mode, and having a CW output power not exceeding 15kW; and 6A005.f.1.

*CIV:* Neodymium-doped (other than glass) ''lasers'' controlled by 6A005.b.6.d.2 (except 6A005.b.6.d.2.b) that have an output wavelength exceeding 1,000 nm, but not exceeding 1,100 nm, and an average or CW output power not exceeding 2kW, and operate in a pulse-excited, non-''Q-switched'' multiple-transverse mode, or in a continuously excited, multiple-transverse mode; Dye and Liquid Lasers controlled by 6A005.c.1, c.2 and c.3, except for a pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the ''pulse duration'' is less than 100 ns; CO ''lasers'' controlled by 6A005.d.2 having a CW maximum rated single or multimode output power not exceeding 10 kW; $CO_2$ or $CO/CO_2$ ''lasers'' controlled by 6A005.d.3 having an output wavelength in the range from 9,000 to 11,000 nm and having a pulsed output not exceeding 2 J per pulse and a maximum rated average single or multimode output power not exceeding 5 kW; $CO_2$ ''lasers'' controlled by 6A005.d.3 that operate in CW multiple-transverse mode, and having a CW output power not exceeding 15kW; and 6A005.f.1.

**List of Items Controlled**

*Related Controls:* (1) See ECCN 6D001 for ''software'' for items controlled under this entry. (2) See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry. (3) Also see ECCNs 6A205 and 6A995. (4) See ECCN 3B001 for excimer ''lasers'' ''specially designed'' for lithography equipment. (5) ''Lasers'' ''specially designed'' or prepared for use in isotope separation are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (6) See USML Category XII(b) and (e) for laser systems or lasers subject to the ITAR. (7) See USML Category XVIII for certain laser-based directed energy weapon systems, equipment, and components subject to the ITAR.

*Related Definitions:* (1) 'Wall-plug efficiency' is defined as the ratio of ''laser'' output power (or ''average output power'') to total electrical input power required to operate

the ''laser'', including the power supply/conditioning and thermal conditioning/heat exchanger, see 6A005.a.6.b.1 and 6A005.b.6; (2) 'Non-repetitive pulsed' refers to ''lasers'' that produce either a single output pulse or that have a time interval between pulses exceeding one minute, see Note 2 of 6A005 and 6A005.d.6.

Items:

**Note:**

1. Pulsed ''lasers'' include those that run in a continuous wave (CW) mode with pulses superimposed.

2. Excimer, semiconductor, chemical, CO, $CO_2$, and 'non-repetitive pulsed' Nd:glass ''lasers'' are only specified by 6A005.d.

**Technical Note:** 'Non-repetitive pulsed' refers to ''lasers'' that produce either a single output pulse or that have a time interval between pulses exceeding one minute.

3. 6A005 includes fiber ''lasers''.

4. The control status of ''lasers'' incorporating frequency conversion (*i.e.,* wavelength change) by means other than one ''laser'' pumping another ''laser'' is determined by applying the control parameters for both the output of the source ''laser'' and the frequency-converted optical output.

5. 6A005 does not control ''lasers'' as follows:

a. Ruby with output energy below 20 J;

b. Nitrogen;

c. Krypton.

a. Non-''tunable'' continuous wave ''(CW) lasers'' having any of the following:

a.1. Output wavelength less than 150 nm and output power exceeding 1W;

a.2. Output wavelength of 150 nm or more but not exceeding 510 nm and output power exceeding 30 W;

**Note:** 6A005.a.2 does not control Argon ''lasers'' having an output power equal to or less than 50 W.

a.3. Output wavelength exceeding 510 nm but not exceeding 540 nm and any of the following:

a.3.a. Single transverse mode output and output power exceeding 50 W; *or*

a.3.b. Multiple transverse mode output and output power exceeding 150 W;

a.4. Output wavelength exceeding 540 nm but not exceeding 800 nm and output power exceeding 30 W;

a.5. Output wavelength exceeding 800 nm but not exceeding 975 nm and any of the following:

a.5.a. Single transverse mode output and output power exceeding 50 W; *or*

a.5.b. Multiple transverse mode output and output power exceeding 80 W;

a.6. Output wavelength exceeding 975 nm but not exceeding 1,150 nm and any of the following;

a.6.a. Single transverse mode output and output power exceeding 500 W; *or*

a.6.b. Multiple transverse mode output and any of the following:

a.6.b.1. 'Wall-plug efficiency' exceeding 18% and output power exceeding 500 W; or

a.6.b.2. Output power exceeding 2 kW;

**Note 1:** 6A005.a.6.b does not control multiple transverse mode, industrial ''lasers'' with output power exceeding 2kW and not exceeding 6 kW with a total mass greater than 1,200 kg. For the purpose of this note, total mass includes all ''components'' required to operate the ''laser,'' *e.g.,* ''laser,'' power supply, heat exchanger, but excludes external optics for beam conditioning and/or delivery.

**Note 2:** 6A005.a.6.b does not apply to multiple transverse mode, industrial ''lasers'' having any of the following:

a. Output power exceeding 500 W but not exceeding 1 kW and having all of the following:

1. Beam Parameter Product (BPP) exceeding 0.7 mm•mrad; *and*

2. 'Brightness' not exceeding 1024 W/(mm•mrad)$^2$;

b. Output power exceeding 1 kW but not exceeding 1.6 kW and having a BPP exceeding 1.25 mm•mrad;

c. Output power exceeding 1.6 kW but not exceeding 2.5 kW and having a BPP exceeding 1.7 mm•mrad;

d. Output power exceeding 2.5 kW but not exceeding 3.3 kW and having a BPP exceeding 2.5 mm•mrad;

e. Output power exceeding 3.3 kW but not exceeding 4 kW and having a BPP exceeding 3.5 mm•mrad;

f. Output power exceeding 4 kW but not exceeding 5 kW and having a BPP exceeding 5 mm•mrad;

g. Output power exceeding 5 kW but not exceeding 6 kW and having a BPP exceeding 7.2 mm•mrad;

h. Output power exceeding 6 kW but not exceeding 8 kW and having a BPP exceeding 12 mm•mrad; *or*

i. Output power exceeding 8 kW but not exceeding 10 kW and having a BPP exceeding 24 mm•mrad;

**Technical Note:** For the purpose of 6A005.a.6.b, Note 2 (a)(2), 'brightness' is defined as the output power of the ''laser'' divided by the squared Beam Parameter Product (BPP), *i.e.,* (output power)/BPP$^2$.

a.7. Output wavelength exceeding 1,150 nm but not exceeding 1,555 nm and any of the following:

a.7.a. Single transverse mode and output power exceeding 50 W; *or*

a.7.b. Multiple transverse mode and output power exceeding 80 W;

a.8. Output wavelength exceeding 1,555 nm but not exceeding 1,850 nm and output power exceeding 1 W;

a.9. Output wavelength exceeding 1,850 nm but not exceeding 2,100 nm, and any of the following:

a.9.a. Single transverse mode and output power exceeding 1 W; *or*

a.9. b. Multiple transverse mode output and output power exceeding 120 W; *or*

a.10. Output wavelength exceeding 2,100 nm and output power exceeding 1 W;

b. Non-''tunable'' ''pulsed lasers'' having any of the following:

b.1. Output wavelength less than 150 nm and any of the following:

b.1.a. Output energy exceeding 50 mJ per pulse and ''peak power'' exceeding 1 W; *or*

b.1.b. ''Average output power'' exceeding 1 W;

b.2. Output wavelength of 150 nm or more but not exceeding 510 nm and any of the following:

b.2.a. Output energy exceeding 1.5 J per pulse and ''peak power'' exceeding 30 W; *or*

b.2.b. ''Average output power'' exceeding 30 W;

**Note:** 6A005.b.2.b does not control Argon ''lasers'' having an ''average output power'' equal to or less than 50 W.

b.3. Output wavelength exceeding 510 nm, but not exceeding 540 nm and any of the following:

b.3.a. Single transverse mode output and any of the following:

b.3.a.1. Output energy exceeding 1.5 J per pulse and ''peak power'' exceeding 50 W; *or*

b.3.a.2. ''Average output power'' exceeding 50 W; *or*

b.3.b. Multiple transverse mode output and any of the following:

b.3.b.1. Output energy exceeding 1.5 J per pulse and ''peak power'' exceeding 150 W; or

b.3.b.2. ''Average output power'' exceeding 150 W;

b.4. Output wavelength exceeding 540 nm but not exceeding 800 nm and any of the following:

b.4.a. ''Pulse duration'' less than 1 ps and any of the following:

b.4.a.1. Output energy exceeding 0.005 J per pulse and ''peak power'' exceeding 5 GW; *or*

b.4.a.2. ''Average output power'' exceeding 20 W; *or*

b.4.b. ''Pulse duration'' equal to or exceeding 1 ps and any of the following:

b.4.b.1. Output energy exceeding 1.5 J per pulse and ''peak power'' exceeding 30 W; *or*

b.4.b.2. ''Average output power'' exceeding 30 W;

b.5. Output wavelength exceeding 800 nm but not exceeding 975 nm and any of the following:

b.5.a. ''Pulse duration'' less than 1ps and any of the following:

b.5.a.1. Output energy exceeding 0.005 J per pulse and ''peak power'' exceeding 5 GW; *or*

b.5.a.2. Single transverse mode output and ''average output power'' exceeding 20 W;

b.5.b. ''Pulse duration'' equal to or exceeding 1 ps and not exceeding 1 μs and any of the following:

b.5.b.1. Output energy exceeding 0.5 J per pulse and ''peak power'' exceeding 50 W;

b.5.b.2. Single transverse mode output and ''average output power'' exceeding 20 W; *or*

b.5.b.3. Multiple transverse mode output and ''average output power'' exceeding 50 W; *or*

b.5.c. ''Pulse duration'' exceeding 1 μs and any of the following:

b.5.c.1. Output energy exceeding 2 J per pulse and ''peak power'' exceeding 50 W;

b.5.c.2. Single transverse mode output and ''average output power'' exceeding 50 W; *or*

b.5.c.3. Multiple transverse mode output and ''average output power'' exceeding 80 W.

b.6. Output wavelength exceeding 975 nm but not exceeding 1,150 nm and any of the following:

b.6.a. ''Pulse duration'' of less than 1 ps, and any of the following:

b.6.a.1. Output ''peak power'' exceeding 2 GW per pulse;

b.6.a.2. ''Average output power'' exceeding 30 W; *or*

b.6.a.3. Output energy exceeding 0.002 J per pulse;

b.6.b. ''Pulse duration'' equal to or exceeding 1 ps and less than 1 ns, and any of the following:

b.6.b.1. Output ''peak power'' exceeding 5 GW per pulse;

b.6.b.2. ''Average output power'' exceeding 50 W; *or*

b.6.b.3. Output energy exceeding 0.1 J per pulse;

b.6.c. ''Pulse duration'' equal to or exceeding 1 ns but not exceeding 1 μs and any of the following:

b.6.c.1. Single transverse mode output and any of the following:

b.6.c.1.a. ''Peak power'' exceeding 100 MW;

b.6.c.1.b. ''Average output power'' exceeding 20 W limited by design to a maximum pulse repetition frequency less than or equal to 1 kHz;

b.6.c.1.c. 'Wall-plug efficiency' exceeding 12%, ''average output power'' exceeding 100 W and capable of operating at a pulse repetition frequency greater than 1 kHz;

b.6.c.1.d. ''Average output power'' exceeding 150 W and capable of operating at a pulse repetition frequency greater than 1 kHz; *or*

b.6.c.1.e. Output energy exceeding 2 J per pulse; *or*

b.6.c.2. Multiple transverse mode output and any of the following:

b.6.c.2.a. ''Peak power'' exceeding 400 MW;

b.6.c.2.b. 'Wall-plug efficiency' exceeding 18% and ''average output power'' exceeding 500 W;

b.6.c.2.c. ''Average output power'' exceeding 2 kW; or

b.6.c.2.d. Output energy exceeding 4 J per pulse; *or*

b.6.d. ''Pulse duration'' exceeding 1 μs and any of the following:

b.6.d.1. Single transverse mode output and any of the following:

b.6.d.1.a. ''Peak power'' exceeding 500 kW;

b.6.d.1.b. 'Wall-plug efficiency' exceeding 12% and ''average output power'' exceeding 100 W; *or*

b.6.d.1.c. ''Average output power'' exceeding 150 W; *or*

b.6.d.2. Multiple transverse mode output and any of the following:

b.6.d.2.a. ''Peak power'' exceeding 1 MW;

b.6.d.2.b. 'Wall-plug efficiency' exceeding 18% and ''average output power'' exceeding 500 W; *or*

b.6.d.2.c. ''Average output power'' exceeding 2 kW;

b.7. Output wavelength exceeding 1,150 nm but not exceeding 1,555 nm and any of the following:

b.7.a. ''Pulse duration'' not exceeding 1 μs and any of the following:

b.7.a.1. Output energy exceeding 0.5 J per pulse and ''peak power'' exceeding 50 W;

b.7.a.2. Single transverse mode output and ''average output power'' exceeding 20 W; *or*

b.7.a.3. Multiple transverse mode output and ''average output power'' exceeding 50 W; *or*

b.7.b. ''Pulse duration'' exceeding 1 μs and any of the following:

b.7.b.1. Output energy exceeding 2 J per pulse and ''peak power'' exceeding 50 W;

b.7.b.2. Single transverse mode output and ''average output power'' exceeding 50 W; *or*

b.7.b.3. Multiple transverse mode output and ''average output power'' exceeding 80 W;

b.8. Output wavelength exceeding 1,555 nm but not exceeding 1,850 nm, and any of the following:

b.8.a. Output energy exceeding 100 mJ per pulse and ''peak power'' exceeding 1 W; *or*

b.8.b. ''Average output power'' exceeding 1 W;

b.9. Output wavelength exceeding 1,850 nm but not exceeding 2,100 nm, and any of the following:

b.9.a. Single transverse mode and any of the following:

b.9.a.1. Output energy exceeding 100 mJ per pulse and ''peak power'' exceeding 1 W; *or*

b.9.a.2. ''Average output power'' exceeding 1 W;

b.9.b. Multiple transverse mode and any of the following:

b.9.b.1. Output energy exceeding 100 mJ per pulse and ''peak power'' exceeding 10 kW; *or*

b.9.b.2. ''Average output power'' exceeding 120 W; *or*

b.10. Output wavelength exceeding 2,100 nm and any of the following:

b.10.a. Output energy exceeding 100 mJ per pulse and ''peak power'' exceeding 1 W; *or*

b.10.b. ''Average output power'' exceeding 1 W;

c. ''Tunable'' lasers having any of the following:

c.1. Output wavelength less than 600 nm and any of the following:

c.1.a. Output energy exceeding 50 mJ per pulse and ''peak power'' exceeding 1 W; *or*

c.1.b. Average or CW output power exceeding 1W;

**Note:** 6A005.c.1 does not apply to dye ''lasers'' or other liquid ''lasers,'' having a multimode output and a wavelength of 150 nm or more but not exceeding 600 nm and all of the following:

1. Output energy less than 1.5 J per pulse or a ''peak power'' less than 20 W; *and*

2. Average or CW output power less than 20 W.

c.2. Output wavelength of 600 nm or more but not exceeding 1,400 nm, and any of the following:

c.2.a. Output energy exceeding 1 J per pulse and ''peak power'' exceeding 20 W; *or*

c.2.b. Average or CW output power exceeding 20 W; *or*

c.3. Output wavelength exceeding 1,400 nm and any of the following:

c.3.a. Output energy exceeding 50 mJ per pulse and ''peak power'' exceeding 1 W; *or*

c.3.b. Average or CW output power exceeding 1 W;

d. Other ''lasers'', not controlled by 6A005.a, 6A005.b, or 6A005.c as follows:

d.1. Semiconductor ''lasers'' as follows:

**Note:**

1. 6A005.d.1 includes semiconductor ''lasers'' having optical output connectors (e.g., fiber optic pigtails).

2. The control status of semiconductor ''lasers'' ''specially designed'' for other equipment is determined by the control status of the other equipment.

d.1.a. Individual single transverse mode semiconductor ''lasers'' having any of the following:

d.1.a.1. Wavelength equal to or less than 1,510 nm and average or CW output power, exceeding 1.5 W; *or*

d.1.a.2. Wavelength greater than 1,510 nm and average or CW output power, exceeding 500 mW;

d.1.b. Individual, multiple-transverse mode semiconductor ''lasers'' having any of the following:

d.1.b.1. Wavelength of less than 1,400 nm and average or CW output power, exceeding 15 W;

d.1.b.2. Wavelength equal to or greater than 1,400 nm and less than 1,900 nm and average or CW output power, exceeding 2.5 W; *or*

d.1.b.3. Wavelength equal to or greater than 1,900 nm and average or CW output power, exceeding 1 W;

d.1.c. Individual semiconductor ''laser'' 'bars' having any of the following:

d.1.c.1. Wavelength of less than 1,400 nm and average or CW output power, exceeding 100 W;

d.1.c.2. Wavelength equal to or greater than 1,400 nm and less than 1,900 nm and average or CW output power, exceeding 25 W; *or*

d.1.c.3. Wavelength equal to or greater than 1,900 nm and average or CW output power, exceeding 10 W;

d.1.d. Semiconductor ''laser'' 'stacked arrays' (two dimensional arrays) having any of the following:

d.1.d.1. Wavelength less than 1,400 nm and having any of the following:

d.1.d.1.a. Average or CW total output power less than 3 kW and having average or CW output 'power density' greater than 500 $W/cm^2$;

d.1.d.1.b. Average or CW total output power equal to or exceeding 3 kW but less than or equal to 5 kW, and having average or CW output 'power density' greater than 350$W/cm^2$;

d.1.d.1.c. Average or CW total output power exceeding 5 kW;

d.1.d.1.d. Peak pulsed 'power density' exceeding 2,500 $W/cm^2$; *or*

**Note:** 6A005.d.1.d.1.d does not apply to epitaxially-fabricated monolithic devices.

d.1.d.1.e. Spatially coherent average or CW total output power, greater than 150 W;

d.1.d.2. Wavelength greater than or equal to 1,400 nm but less than 1,900 nm, and having any of the following:

d.1.d.2.a. Average or CW total output power less than 250 W and average or CW output 'power density' greater than 150 W/cm2;

d.1.d.2.b. Average or CW total output power equal to or exceeding 250 W but less than or equal to 500 W, and having average or CW output 'power density' greater than 50$W/cm^2$;

d.1.d.2.c. Average or CW total output power exceeding 500 W;

d.1.d.2.d. Peak pulsed 'power density' exceeding 500 $W/cm^2$; *or*

**Note:** 6A005.d.1.d.2.d does not apply to epitaxially-fabricated monolithic devices.

d.1.d.2.e. Spatially coherent average or CW total output power, exceeding 15 W;

d.1.d.3. Wavelength greater than or equal to 1,900 nm and having any of the following:

d.1.d.3.a. Average or CW output 'power density' greater than 50 W/cm$^2$;

d.1.d.3.b. Average or CW output power greater than 10 W; *or*

d.1.d.3.c. Spatially coherent average or CW total output power, exceeding 1.5 W; *or*

d.1.d.4. At least one ''laser'' 'bar' specified by 6A005.d.1.c;

**Technical Note:** For the purposes of 6A005.d.1.d, 'power density' means the total ''laser'' output power divided by the emitter surface area of the 'stacked array'.

d.1.e. Semiconductor ''laser'' 'stacked arrays', other than those specified by 6.A005.d.1.d., having all of the following:

d.1.e.1. ''Specially designed'' or modified to be combined with other 'stacked arrays' to form a larger 'stacked array'; *and*

d.1.e.2. Integrated connections, common for both electronics and cooling;

**Note 1:** 'Stacked arrays', formed by combining semiconductor ''laser'' 'stacked arrays' specified by 6A005.d.1.e, that are not designed to be further combined or modified are specified by 6A005.d.1.d.

**Note 2:** 'Stacked arrays', formed by combining semiconductor ''laser'' 'stacked arrays' specified by 6A005.d.1.e, that are designed to be further combined or modified are specified by 6A005.d.1.e.

**Note 3:** 6A005.d.1.e does not apply to modular assemblies of single 'bars' designed to be fabricated into end to end stacked linear arrays.

**Technical Notes:**

1. Semiconductor ''lasers'' are commonly called ''laser'' diodes.

2. A 'bar' (also called a semiconductor ''laser'' 'bar', a ''laser'' diode 'bar' or diode 'bar') consists of multiple semiconductor ''lasers'' in a one dimensional array.

3. A 'stacked array' consists of multiple 'bars' forming a two dimensional array of semiconductor ''lasers''.

d.2. Carbon monoxide (CO) ''lasers'' having any of the following:

d.2.a. Output energy exceeding 2 J per pulse and ''peak power'' exceeding 5 kW; *or*

d.2.b. Average or CW output power, exceeding 5 kW;

d.3. Carbon dioxide ($CO_2$) ''lasers'' having any of the following:

d.3.a. CW output power exceeding 15 kW;

d.3.b. Pulsed output with ''pulse duration'' exceeding 10 µs and any of the following:

d.3.b.1. ''Average output power'' exceeding 10 kW; *or*

d.3.b.2. ''Peak power'' exceeding 100 kW; *or*

d.3.c. Pulsed output with a ''pulse duration'' equal to or less than 10 µs and any of the following:

d.3.c.1. Pulse energy exceeding 5 J per pulse; *or*

d.3.c.2. ''Average output power'' exceeding 2.5 kW;

d.4. Excimer ''lasers'' having any of the following:

d.4.a. Output wavelength not exceeding 150 nm and any of the following:

d.4.a.1. Output energy exceeding 50 mJ per pulse; *or*

d.4.a.2. ''Average output power'' exceeding 1 W;

d.4.b. Output wavelength exceeding 150 nm but not exceeding 190 nm and any of the following:

d.4.b.1. Output energy exceeding 1.5 J per pulse; *or*

d.4.b.2. ''Average output power'' exceeding 120 W;

d.4.c. Output wavelength exceeding 190 nm but not exceeding 360 nm and any of the following:

d.4.c.1. Output energy exceeding 10 J per pulse; *or*

d.4.c.2. ''Average output power'' exceeding 500 W; *or*

d.4.d. Output wavelength exceeding 360 nm and any of the following:

d.4.d.1. Output energy exceeding 1.5 J per pulse; *or*

d.4.d.2. ''Average output power'' exceeding 30 W;

**Note:** For excimer ''lasers'' ''specially designed'' for lithography equipment, see 3B001.

d.5. ''Chemical lasers'' as follows:

d.5.a. Hydrogen Fluoride (HF) ''lasers';

d.5.b. Deuterium Fluoride (DF) ''lasers'';

d.5.c. ''Transfer lasers'' as follows:

d.5.c.1. Oxygen Iodine ($O_2$-I) ''lasers'';

d.5.c.2. Deuterium Fluoride-Carbon dioxide (DF-$CO_2$) ''lasers'';

d.6. 'Non-repetitive pulsed' Neodymium (Nd) glass ''lasers'' having any of the following:

d.6.a. A ''pulse duration'' not exceeding 1 µs and output energy exceeding 50 J per pulse; *or*

d.6.b. A ''pulse duration'' exceeding 1 µs and output energy exceeding 100 J per pulse;

e. ''Components'' as follows:

e.1. Mirrors cooled either by 'active cooling' or by heat pipe cooling;

**Technical Note:** 'Active cooling' is a cooling technique for optical ''components'' using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical-''components,'' other than fused tapered fiber combiners and Multi-Layer Dielectric gratings (MLDs), ''specially designed'' for use with controlled ''lasers'';

**Note to 6A005.e.2:** Fiber combiners and MLDs are specified by 6A005.e.3.

e.3. Fiber ''laser'' ''components'' as follows:

e.3.a. Multimode to multimode fused tapered fiber combiners having all of the following:

e.3.a.1. An insertion loss better (less) than or equal to 0.3 dB maintained at a rated total average or CW output power (excluding output power transmitted through the single mode core if present) exceeding 1,000 W; *and*

e.3.a.2. Number of input fibers equal to or greater than 3;

e.3.b. Single mode to multimode fused tapered fiber combiners having all of the following:

e.3.b.1. An insertion loss better (less) than 0.5 dB maintained at a rated total average or CW output power exceeding 4,600 W;

e.3.b.2. Number of input fibers equal to or greater than 3; *and*

e.3.b.3. Having any of the following:

e.3.b.3.a. A Beam Parameter Product (BPP) measured at the output not exceeding 1.5 mm mrad for a number of input fibers less than or equal to 5; *or*

e.3.b.3.b. A BPP measured at the output not exceeding 2.5 mm mrad for a number of input fibers greater than 5;

e.3.c. MLDs having all of the following:

e.3.c.1. Designed for spectral or coherent beam combination of 5 or more fiber ''lasers;'' *and*

e.3.c.2. CW ''Laser'' Induced Damage Threshold (LIDT) greater than or equal to 10 kW/cm$^2$;

f. Optical equipment as follows:

*N.B.: For shared aperture optical elements, capable of operating in ''Super-High Power Laser'' (''SHPL'') applications, see the U.S. Munitions List (22 CFR part 121).*

f.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront having any the following:

f.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; *or*

f.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

f.2. ''Laser'' diagnostic equipment capable of measuring ''SHPL'' system angular beam steering errors of equal to or less than 10 µrad;

f.3. Optical equipment and ''components,'' ''specially designed'' for a phased-array ''SHPL'' system for coherent beam combination to an ''accuracy'' of $\lambda/10$ at the designed wavelength, or 0.1 µm, whichever is the smaller;

f.4. Projection telescopes ''specially designed'' for use with ''SHPL'' systems;

g. 'Laser acoustic detection equipment' having all of the following:

g.1. CW ''laser'' output power greater than or equal to 20 mW;

g.2. ''Laser'' frequency stability equal to or better (less) than 10 MHz;

g.3. ''Laser'' wavelengths equal to or exceeding 1,000 nm but not exceeding 2,000 nm;

g.4. Optical system resolution better (less) than 1 nm; *and*

g.5. Optical Signal to Noise ratio equal or exceeding to $10^3$.

**Technical Note:** 'Laser acoustic detection equipment' is sometimes referred to as a ''Laser'' Microphone or Particle Flow Detection Microphone.

■ 45. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6A008 is revised to read as follows:

**6A008 Radar systems, equipment and assemblies, having any of the following (see List of Items Controlled), and ''specially designed'' ''components'' therefor.**

**License Requirements**

*Reason for Control:* NS, MT, RS, AT

| *Control(s)* | *Country chart (See Supp. No.1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| MT applies to items that are designed for airborne applications and that are usable in systems controlled for MT reasons. | MT Column 1 |
| RS applies to 6A008.j.1 | RS Column 1 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $5000; N/A for MT and for 6A008.j.1.
*GBS:* Yes, for 6A008.b, .c, and l.1 only
*CIV:* Yes, for 6A008.b, .c, and l.1 only

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship any commodity in 6A008.d, 6A008.h or 6A008.k to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* (1) See also ECCNs 6A108 and 6A998. ECCN 6A998 controls, inter alia, the Light Detection and Ranging (LIDAR) equipment excluded by the note to paragraph j of this ECCN (6A008). (2) See USML Category XII(b) for certain LIDAR, Laser Detection and Ranging (LADAR), or range-gated systems subject to the ITAR.
*Related Definitions:* N/A
*Items:*

**Note:** 6A008 does not control:
—Secondary surveillance radar (SSR);
—Civil Automotive Radar;
—Displays or monitors used for air traffic control (ATC);
—Meteorological (weather) radar;
—Precision Approach Radar (PAR) equipment conforming to ICAO standards and employing electronically steerable linear (1-dimensional) arrays or mechanically positioned passive antennas.

a. Operating at frequencies from 40 GHz to 230 GHz and having any of the following:
a.1. An ''average output power'' exceeding 100 mW; *or*
a.2. Locating ''accuracy'' of 1 m or less (better) in range and 0.2 degree or less (better) in azimuth;
b. A tunable bandwidth exceeding ±6.25% of the 'center operating frequency';

**Technical Note:** The 'center operating frequency' equals one half of the sum of the highest plus the lowest specified operating frequencies.

c. Capable of operating simultaneously on more than two carrier frequencies;
d. Capable of operating in synthetic aperture (SAR), inverse synthetic aperture (ISAR) radar mode, or sidelooking airborne (SLAR) radar mode;
e. Incorporating electronically steerable array antennas;
f. Capable of heightfinding non-cooperative targets;
g. ''Specially designed'' for airborne (balloon or airframe mounted) operation and having Doppler ''signal processing'' for the detection of moving targets;
h. Employing processing of radar signals and using any of the following:
h.1. ''Radar spread spectrum'' techniques; *or*
h.2. ''Radar frequency agility'' techniques;
i. Providing ground-based operation with a maximum ''instrumented range'' exceeding 185 km;

**Note:** 6A008.i does not control:
a. Fishing ground surveillance radar;
b. Ground radar equipment ''specially designed'' for en route air traffic control, and having all of the following:
1. A maximum ''instrumented range'' of 500 km or less;
2. Configured so that radar target data can be transmitted only one way from the radar site to one or more civil ATC centers;
3. Contains no provisions for remote control of the radar scan rate from the en route ATC center; and
4. Permanently installed;
c. Weather balloon tracking radars.

j. Being ''laser'' radar or Light Detection and Ranging (LIDAR) equipment and having any of the following:
j.1. ''Space-qualified'';
j.2. Employing coherent heterodyne or homodyne detection techniques and having an angular resolution of less (better) than 20 μrad (microradians); *or*
j.3. Designed for carrying out airborne bathymetric littoral surveys to International Hydrographic Organization (IHO) Order 1a Standard (5th Edition February 2008) for Hydrographic Surveys or better, and using one or more ''lasers'' with a wavelength exceeding 400 nm but not exceeding 600 nm;

**Note 1:** LIDAR equipment ''specially designed'' for surveying is only specified by 6A008.j.3.

**Note 2:** 6A008.j does not apply to LIDAR equipment ''specially designed'' for meteorological observation.

**Note 3:** Parameters in the IHO Order 1a Standard 5th Edition February 2008 are summarized as follows:
Horizontal Accuracy (95% Confidence Level) = 5 m + 5% of depth.
Depth Accuracy for Reduced Depths (95% confidence level) = $\pm\sqrt{(a^2+(b*d)^2)}$ where:
a = 0.5 m = constant depth error, *i.e.* the sum of all constant depth errors
b = 0.013 = factor of depth dependant error
b*d = depth dependant error, *i.e.* the sum of all depth dependant errors
d = depth
Feature Detection = Cubic features > 2 m in depths up to 40 m; 10% of depth beyond 40 m.

k. Having ''signal processing'' sub-systems using ''pulse compression'' and having any of the following:
k.1. A ''pulse compression'' ratio exceeding 150; *or*
k.2. A compressed pulse width of less than 200 ns; *or*

**Note:** 6A008.k.2 does not apply to two dimensional 'marine radar' or 'vessel traffic service' radar, having all of the following:
a. ''Pulse compression'' ratio not exceeding 150;
b. Compressed pulse width of greater than 30 ns;
c. Single and rotating mechanically scanned antenna;
d. Peak output power not exceeding 250 W; *and*
e. Not capable of ''frequency hopping''.

l. Having data processing sub-systems and having any of the following:
l.1. ''Automatic target tracking'' providing, at any antenna rotation, the predicted target position beyond the time of the next antenna beam passage; or

**Note:** 6A008.l.1 does not control conflict alert capability in ATC systems, or 'marine radar'.

l.2. [Reserved]
l.3. [Reserved]
l.4. Configured to provide superposition and correlation, or fusion, of target data within six seconds from two or more ''geographically dispersed'' radar sensors to improve the aggregate performance beyond that of any single sensor specified by 6A008.f, or 6A008.i.
*N.B.: See also the U.S. Munitions List (22 CFR part 121).*

**Note:** 6A008.l does not apply to systems, equipment and assemblies designed for 'vessel traffic services'.

**Technical Notes:**
1. For the purposes of 6A008, 'marine radar' is a radar that is used to navigate safely at sea, inland waterways or near-shore environments.
2. For the purposes of 6A008, 'vessel traffic service' is a vessel traffic monitoring and control service similar to air traffic control for ''aircraft.''

■ 46. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6D003 is revised to read as follows:

**6D003 Other ''software'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, RS, AT

| *Control(s)* | *Country chart (See Supp. No.1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| RS applies to paragraph c. | RS Column 1 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* Yes for 6D003.h.1

*TSR:* Yes, except for 6D003.c and exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''software'' for items controlled by 6D003.a.

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship or transmit software in 6D003.a to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* See also ECCNs 6D103, 6D991, and 6D993.

*Related Definitions:* N/A

*Items:*

*Acoustics*

a. ''Software'' as follows:

a.1. ''Software'' ''specially designed'' for acoustic beam forming for the ''real-time processing'' of acoustic data for passive reception using towed hydrophone arrays;

a.2. ''Source code'' for the ''real-time processing'' of acoustic data for passive reception using towed hydrophone arrays;

a.3. ''Software'' ''specially designed'' for acoustic beam forming for the ''real-time processing'' of acoustic data for passive reception using bottom or bay cable systems;

a.4. ''Source code'' for the ''real-time processing'' of acoustic data for passive reception using bottom or bay cable systems;

a.5. ''Software'' or ''source code'', ''specially designed'' for all of the following:

a.5.a. ''Real-time processing'' of acoustic data from sonar systems controlled by 6A001.a.1.e; *and*

a.5.b. Automatically detecting, classifying and determining the location of divers or swimmers;

*N.B.: For diver detection ''software'' or ''source code'', ''specially designed'' or modified for military use, see the U.S. Munitions List of the International Traffic in Arms Regulations (ITAR) (22 CFR part 121).*

b. Optical sensors. None.

*Cameras*

c. ''Software'' designed or modified for cameras incorporating ''focal plane arrays'' specified by 6A002.a.3.f and designed or modified to remove a frame rate restriction and allow the camera to exceed the frame rate specified in 6A003.b.4 Note 3.a;

*Optics*

d. ''Software'' specially designed to maintain the alignment and phasing of segmented mirror systems consisting of mirror segments having a diameter or major axis length equal to or larger than 1 m;

e. Lasers. None.

*Magnetic and Electric Field Sensors*

f. ''Software'' as follows:

f.1. ''Software'' ''specially designed'' for magnetic and electric field ''compensation systems'' for magnetic sensors designed to operate on mobile platforms;

f.2. ''Software'' ''specially designed'' for magnetic and electric field anomaly detection on mobile platforms;

f.3. ''Software'' ''specially designed'' for ''real-time processing'' of electromagnetic data using underwater electromagnetic receivers specified by 6A006.e;

f.4. ''Source code'' for ''real-time processing'' of electromagnetic data using underwater electromagnetic receivers specified by 6A006.e;

*Gravimeters*

g. ''Software'' ''specially designed'' to correct motional influences of gravity meters or gravity gradiometers;

*Radar*

h. ''Software'' as follows:

h.1. Air Traffic Control (ATC) ''software'' application ''programs'' designed to be hosted on general purpose computers located at Air Traffic Control centers and capable of accepting radar target data from more than four primary radars;

h.2. ''Software'' for the design or ''production'' of radomes and having all of the following:

h.2.a. ''Specially designed'' to protect the ''electronically steerable phased array antennae'' controlled by 6A008.e.; *and*

h.2.b. Resulting in an antenna pattern having an 'average side lobe level' more than 40 dB below the peak of the main beam level.

**Technical Note:** 'Average side lobe level' in 6D003.h.2.b is measured over the entire array excluding the angular extent of the main beam and the first two side lobes on either side of the main beam.

■ 47. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6, ECCN 6E003 is revised to read as follows:

**6E003 Other ''technology'' as follows (see List of Items Controlled).**

**License Requirements**

Reason for Control: NS, AT

| Control(s) | Country chart (See Supp. No.1 to part 738) |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A

*TSR:* Yes

**List of Items Controlled**

*Related Controls:* See also *6E993*

*Related Definitions:* N/A

*Items:*

*Acoustics*

a. [Reserved]

*Optical Sensors*

b. [Reserved]

*Cameras*

c. [Reserved]

*Optics*

d. ''Technology'' as follows:

d.1. ''Technology'' ''required'' for the coating and treatment of optical surfaces to achieve an 'optical thickness' uniformity of 99.5% or better for optical coatings 500 mm or more in diameter or major axis length and with a total loss (absorption and scatter) of less than $5 \times 10^{-3}$;

*N.B.: See also 2E003.f.*

**Technical Note:** 'Optical thickness' is the mathematical product of the index of refraction and the physical thickness of the coating.

d.2. ''Technology'' for the fabrication of optics using single point diamond turning techniques to produce surface finish ''accuracies'' of better than 10 nm rms on non-planar surfaces exceeding 0.5 $m^2$;

*Lasers*

e. ''Technology'' ''required'' for the ''development,'' ''production'' or ''use'' of ''specially designed'' diagnostic instruments or targets in test facilities for ''SHPL'' testing or testing or evaluation of materials irradiated by ''SHPL'' beams;

*Magnetic and Electric Field Sensors*

f. [Reserved]

*Gravimeters*

g. [Reserved]

*Radar*

h. [Reserved]

■ 48. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7, ECCN 7D003 is revised to read as follows:

**7D003 Other ''software'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, MT, AT

| Control(s) | Country chart (See Supp. No.1 to part 738) |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| MT applies to ''software'' for equipment controlled for MT reasons. MT does not apply to ''software'' for equipment controlled by 7A008. | MT Column 1 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License

Exceptions, and Validated End-User authorizations.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship or transmit software in 7D003.a or .b to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* See also 7D103 and 7D994.
*Related Definitions:* 'Data-Based Referenced Navigation' ('DBRN') systems are systems which use various sources of previously measured geo-mapping data integrated to provide accurate navigation information under dynamic conditions. Data sources include bathymetric maps, stellar maps, gravity maps, magnetic maps or 3–D digital terrain maps.
*Items:*

a. ''Software'' ''specially designed'' or modified to improve the operational performance or reduce the navigational error of systems to the levels controlled by 7A003, 7A004 or 7A008;

b. ''Source code'' for hybrid integrated systems which improves the operational performance or reduces the navigational error of systems to the level controlled by 7A003 or 7A008 by continuously combining heading data with any of the following:

b.1. Doppler radar or sonar velocity data;

b.2. Global Navigation Satellite Systems (GNSS) reference data; *or*

b.3. Data from 'Data-Based Referenced Navigation' ('DBRN'') systems;

c. [Reserved]

d. [Reserved]

*N.B. For flight control ''source code,'' see 7D004.*

e. Computer-Aided-Design (CAD) ''software'' ''specially designed'' for the ''development'' of ''active flight control systems'', helicopter multi-axis fly-by-wire or fly-by-light controllers or helicopter ''circulation controlled anti-torque or circulation-controlled direction control systems'', whose ''technology'' is controlled by 7E004.b.1, 7E004.b.3 to b.5, 7E004.b.7 to b.8, 7E004.c.1 or 7E004.c.2.

■ 49. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7, ECCN 7D004 is revised to read as follows:

**7D004 ''Source code'' incorporating ''development'' ''technology'' specified by 7E004.a.2, a.3, a.5, a.6 or 7E004.b, for any of the following: (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country chart (See Supp. No.1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship or transmit ''software'' in 7D004.a to .d and .g to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* See 7D103 and 7D994
*Related Definitions:* N/A
Items:

a. Digital flight management systems for ''total control of flight'';

b. Integrated propulsion and flight control systems;

c. ''Fly-by-wire systems'' or ''fly-by-light systems'';

d. Fault-tolerant or self-reconfiguring ''active flight control systems'';

e. [Reserved];

f. Air data systems based on surface static data; *or*

g. Three dimensional displays.

**Note:** 7D004 does not apply to ''source code'' associated with common computer elements and utilities (*e.g.,* input signal acquisition, output signal transmission, computer program and data loading, built-in test, task scheduling mechanisms) not providing a specific flight control system function.

■ 50. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7, ECCN 7E001 is revised to read as follows:

**7E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment or ''software,'' specified by 7A. (except 7A994), 7B. (except 7B994), 7D001, 7D002, 7D003 or 7D005.**

**License Requirements**

*Reason for Control:* NS, MT, RS, AT

| *Control(s)* | *Country chart (See Supp. No.1 to part 738)* |
|---|---|
| NS applies to ''technology'' for items controlled by 7A001 to 7A004, 7A006, 7A008, 7B001 to 7B003, 7D001 to 7D005. | NS Column 1 |
| MT applies to technology for equipment controlled for MT reasons. MT *does not* apply to ''technology'' for equipment controlled by 7A008. MT *does* apply to ''technology'' for equipment specified in 7A001, 7A002 or 7A003.d that meets or exceeds parameters of 7A101, 7A102 or 7A103. | MT Column 1 |
| RS applies to ''technology'' for inertial navigation systems or inertial equipment, and ''components'' therefor, for 9A991.b aircraft. | RS Column 1 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship or transmit any technology in this entry to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* (1) See also 7E101 and 7E994. (2) The ''technology'' related to 7A003.b, 7A005, 7A103.b, 7A105, 7A106, 7A115, 7A116, 7A117, 7B103, software in 7D101 specified in the Related Controls paragraph of ECCN 7D101, 7D102.a, or 7D103 is ''subject to the ITAR'' (see 22 CFR parts 120 through 130).
*Related Definitions:* N/A
*Items:*

The list of items controlled is contained in the ECCN heading.

**Note:** 7E001 includes key management ''technology'' exclusively for equipment specified in 7A005.a.

■ 51. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7, ECCN 7E003 is revised to read as follows:

**7E003 ''Technology'' according to the General Technology Note for the repair, refurbishing or overhaul of equipment controlled by 7A001 to 7A004.**

**License Requirements**

*Reason for Control:* NS, MT, AT

| Control(s) | Country chart (See Supp. No.1 to part 738) |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| MT applies to entire entry. | MT Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**List of Items Controlled**

*Related Controls:* See also 7E994. This entry does not control ''technology'' for maintenance directly associated with calibration, removal or replacement of damaged or unserviceable LRUs and SRAs of a ''civil aircraft'' as described in 'Maintenance Level I' or 'Maintenance Level II'.
*Related Definition:* Refer to the Related Definitions for 7B001 for 'Maintenance Level I' or 'Maintenance Level II'.
*Items:*

The list of items controlled is contained in the ECCN heading.

■ 52. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7, ECCN 7E004 is revised to read as follows:

**7E004 Other ''technology'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, MT, AT

| Control(s) | Country chart (See Supp. No.1 to part 738) |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| MT applies to ''technology'' for equipment or systems controlled for MT reasons. | MT Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**Special Conditions for STA**

*STA:* (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for 7E004, except for 7E004.a.7. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for 7E004, except for 7E004.a.7.

**List of Items Controlled**

*Related Controls:* (1) See also 7E001, 7E002, 7E101, and 7E994. (2) In addition to the Related Controls in 7E001, 7E002, and 7E101 that include MT controls, also see the MT controls in 7E104 for design ''technology'' for the integration of the flight control, guidance, and propulsion data into a flight management system, designed or modified for rockets or missiles capable of achieving a ''range'' equal to or greater than 300 km, for optimization of rocket system trajectory; and also see 9E101 for design ''technology'' for integration of air vehicle fuselage, propulsion system and lifting control surfaces, designed or modified for unmanned aerial vehicles capable of achieving a ''range'' equal to or greater than 300 km, to optimize aerodynamic performance throughout the flight regime of an unmanned aerial vehicle.
*Related Definitions:* ''*Primary flight control*'' means an ''aircraft'' stability or maneuvering control using force/moment generators, *i.e.,* aerodynamic control surfaces or propulsive thrust vectoring.
*Items:*

a. ''Technology'' for the ''development'' or ''production'' of any of the following:

a.1. [Reserved]

a.2. Air data systems based on surface static data only, *i.e.,* which dispense with conventional air data probes;

a.3. Three dimensional displays for ''aircraft'';

a.4. [Reserved]

a.5. Electric actuators (*i.e.,* electromechanical, electrohydrostatic and integrated actuator package) ''specially designed'' for ''primary flight control'';

a.6. ''Flight control optical sensor array'' ''specially designed'' for implementing ''active flight control systems''; or

a.7. ''DBRN'' systems designed to navigate underwater, using sonar or gravity databases, that provide a positioning ''accuracy'' equal to or less (better) than 0.4 nautical miles;

b. ''Development'' ''technology'', as follows, for ''active flight control systems'' (including ''fly-by-wire systems'' or ''fly-by-light systems''):

b.1. Photonic-based ''technology'' for sensing ''aircraft'' or flight control component state, transferring flight control data, or commanding actuator movement, ''required'' for ''fly-by-light systems'' ''active flight control systems'';

b.2. [Reserved]

b.3. Real-time algorithms to analyze component sensor information to predict and preemptively mitigate impending degradation and failures of components within an ''active flight control system'';

**Note:** 7E004.b.3 does not include algorithms for purpose of off-line maintenance.

b.4. Real-time algorithms to identify component failures and reconfigure force and moment controls to mitigate ''active flight control system'' degradations and failures;

**Note:** 7E004.b.4 does not include algorithms for the elimination of fault effects through comparison of redundant data sources, or off-line pre-planned responses to anticipated failures.

b.5. Integration of digital flight control, navigation and propulsion control data, into a digital flight management system for ''total control of flight'';

**Note:** 7E004.b.5 does not apply to:

1. ''Technology'' for integration of digital flight control, navigation and propulsion control data, into a digital flight management system for ''flight path optimization'';

2. ''Technology'' for ''aircraft'' flight instrument systems integrated solely for VOR, DME, ILS or MLS navigation or approaches.

b.6. [Reserved]

b.7. ''Technology'' ''required'' for deriving the functional requirements for ''fly-by-wire systems'' having all of the following:

b.7.a. 'Inner-loop' airframe stability controls requiring loop closure rates of 40 Hz or greater; *and*

**Technical Note:** 'Inner-loop' refers to functions of ''active flight control systems'' that automate airframe stability controls.

b.7.b. Having any of the following:

b.7.b.1. Corrects an aerodynamically unstable airframe, measured at any point in the design flight envelope, that would lose recoverable control if not corrected within 0.5 seconds;

b.7.b.2. Couples controls in two or more axes while compensating for 'abnormal changes in aircraft state';

**Technical Note:** 'Abnormal changes in aircraft state' include in-flight structural damage, loss of engine thrust, disabled control surface, or destabilizing shifts in cargo load.

b.7.b.3. Performs the functions specified in 7E004.b.5; *or*

**Note:** 7E004.b.7.b.3 does not apply to autopilots.

b.7.b.4. Enables ''aircraft'' to have stable controlled flight, other than during take-off or landing, at greater than 18 degrees angle of attack, 15 degrees side slip, 15 degrees/second pitch or yaw rate, or 90 degrees/second roll rate;

b.8. ''Technology'' ''required'' for deriving the functional requirements of ''fly-by-wire systems'' to achieve all of the following:

b.8.a. No loss of control of the ''aircraft'' in the event of a consecutive sequence of any two individual faults within the ''fly-by-wire system''; *and*

b.8.b. Probability of loss of control of the ''aircraft'' being less (better) than $1 \times 10^{-9}$ failures per flight hour;

**Note:** 7E004.b does not apply to ''technology'' associated with common computer elements and utilities (*e.g.,* input signal acquisition, output signal transmission, computer program and data loading, built-in test, task scheduling mechanisms) not providing a specific flight control system function.

c. ''Technology'' for the ''development'' of helicopter systems, as follows:

c.1. Multi-axis fly-by-wire or fly-by-light controllers, which combine the functions of at least two of the following into one controlling element:

c.1.a. Collective controls;

c.1.b. Cyclic controls;

c.1.c. Yaw controls;

c.2. ''Circulation-controlled anti-torque or circulation-controlled direction control systems'';

c.3. Rotor blades incorporating ''variable geometry airfoils'', for use in systems using individual blade control.

■ 53. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8, ECCN 8A002 is revised to read as follows:

**8A002 Marine systems, equipment, ''parts'' and ''components,'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $5000; N/A for 8A002.o.3.b

*GBS:* Yes for manipulators for civil end uses (*e.g.,* underwater oil, gas or mining operations) controlled by 8A002.i.2 and having 5 degrees of freedom of movement; and 8A002.r.

*CIV:* Yes for manipulators for civil end uses (*e.g.,* underwater oil, gas or mining operations) controlled by 8A002.i.2 and having 5 degrees of freedom of movement; and 8A002.r.

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship any commodity in 8A002.b, h, j, o.3, or p to any of the destinations listed in Country Group A:6 (See Supplement No.1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* (1) See also 8A992 and for underwater communications systems, see Category 5, Part I—Telecommunications. (2) See also 8A992 for self-contained underwater breathing apparatus that is not controlled by 8A002 or released for control by the 8A002.q Note. (3) For electronic imaging systems ''specially designed'' or modified for underwater use incorporating image intensifier tubes specified by 6A002.a.2.a or 6A002.a.2.b, see 6A003.b.3. (4) For electronic imaging systems ''specially designed'' or modified for underwater use incorporating ''focal plane arrays'' specified by 6A002.a.3.g, see 6A003.b.4.c. (5) Section 744.9 imposes a license requirement on commodities described in 8A002.d if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into an item controlled by ECCN 0A919.

*Related Definitions:* N/A

*Items:*

a. Systems, equipment, ''parts'' and ''components,'' ''specially designed'' or modified for submersible vehicles and designed to operate at depths exceeding 1,000 m, as follows:

a.1. Pressure housings or pressure hulls with a maximum inside chamber diameter exceeding 1.5 m;

a.2. Direct current propulsion motors or thrusters;

a.3. Umbilical cables, and connectors therefor, using optical fiber and having synthetic strength members;

a.4. ''Parts'' and ''components'' manufactured from material specified by ECCN 8C001;

**Technical Note:** The objective of 8A002.a.4 should not be defeated by the export of 'syntactic foam' controlled by 8C001 when an intermediate stage of manufacture has been performed and it is not yet in its final component form.

b. Systems ''specially designed'' or modified for the automated control of the motion of submersible vehicles controlled by 8A001, using navigation data, having closed loop servo-controls and having any of the following:

b.1. Enabling a vehicle to move within 10 m of a predetermined point in the water column;

b.2. Maintaining the position of the vehicle within 10 m of a predetermined point in the water column; *or*

b.3. Maintaining the position of the vehicle within 10 m while following a cable on or under the seabed;

c. Fiber optic pressure hull penetrators;

d. Underwater vision systems ''specially designed'' or modified for remote operation with an underwater vehicle, employing techniques to minimize the effects of back scatter and including range-gated illuminators or ''laser'' systems;

e. [Reserved]

f. [Reserved]

g. Light systems ''specially designed'' or modified for underwater use, as follows:

g.1. Stroboscopic light systems capable of a light output energy of more than 300 J per flash and a flash rate of more than 5 flashes per second;

g.2. Argon arc light systems ''specially designed'' for use below 1,000 m;

h. ''Robots'' ''specially designed'' for underwater use, controlled by using a dedicated computer and having any of the following:

h.1. Systems that control the ''robot'' using information from sensors which measure force or torque applied to an external object, distance to an external object, or tactile sense between the ''robot'' and an external object; *or*

h.2. The ability to exert a force of 250 N or more or a torque of 250 Nm or more and using titanium based alloys or ''composite'' ''fibrous or filamentary materials'' in their structural members;

i. Remotely controlled articulated manipulators ''specially designed'' or modified for use with submersible vehicles and having any of the following:

i.1. Systems which control the manipulator using information from sensors which measure any of the following:

i.1.a. Torque or force applied to an external object; *or*

i.1.b. Tactile sense between the manipulator and an external object; *or*

i.2. Controlled by proportional master-slave techniques and having 5 degrees of 'freedom of movement' or more;

**Technical Note:** Only functions having proportionally related motion control using positional feedback are counted when determining the number of degrees of 'freedom of movement'.

j. Air independent power systems ''specially designed'' for underwater use, as follows:

j.1. Brayton or Rankine cycle engine air independent power systems having any of the following:

j.1.a. Chemical scrubber or absorber systems, ''specially designed'' to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.1.b. Systems ''specially designed'' to use a monoatomic gas;

j.1.c. Devices or enclosures, ''specially designed'' for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *or*

j.1.d. Systems having all of the following:

j.1.d.1. ''Specially designed'' to pressurize the products of reaction or for fuel reformation;

j.1.d.2. ''Specially designed'' to store the products of the reaction; *and*

j.1.d.3. ''Specially designed'' to discharge the products of the reaction against a pressure of 100 kPa or more;

j.2. Diesel cycle engine air independent systems having all of the following:

j.2.a. Chemical scrubber or absorber systems, ''specially designed'' to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.2.b. Systems ''specially designed'' to use a monoatomic gas;

j.2.c. Devices or enclosures, ''specially designed'' for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *and*

j.2.d. ''Specially designed'' exhaust systems that do not exhaust continuously the products of combustion;

j.3. ''Fuel cell'' air independent power systems with an output exceeding 2 kW and having any of the following:

j.3.a. Devices or enclosures, ''specially designed'' for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *or*

j.3.b. Systems having all of the following:

j.3.b.1. ''Specially designed'' to pressurize the products of reaction or for fuel reformation;

j.3.b.2. ''Specially designed'' to store the products of the reaction; *and*

j.3.b.3. ''Specially designed'' to discharge the products of the reaction against a pressure of 100 kPa or more;

j.4. Stirling cycle engine air independent power systems having all of the following:

j.4.a. Devices or enclosures, ''specially designed'' for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *and*

j.4.b. ''Specially designed'' exhaust systems which discharge the products of combustion against a pressure of 100 kPa or more;

k. through n. [Reserved]

o. Propellers, power transmission systems, power generation systems and noise reduction systems, as follows:

o.1. [Reserved]

o.2. Water-screw propeller, power generation systems or transmission systems, designed for use on vessels, as follows:

o.2.a. Controllable-pitch propellers and hub assemblies, rated at more than 30 MW;

o.2.b. Internally liquid-cooled electric propulsion engines with a power output exceeding 2.5 MW;

o.2.c. ''Superconductive'' propulsion engines or permanent magnet electric propulsion engines, with a power output exceeding 0.1 MW;

o.2.d. Power transmission shaft systems incorporating ''composite'' material ''parts'' or ''components'' and capable of transmitting more than 2 MW;

o.2.e. Ventilated or base-ventilated propeller systems, rated at more than 2.5 MW;

o.3. Noise reduction systems designed for use on vessels of 1,000 tonnes displacement or more, as follows:

o.3.a. Systems that attenuate underwater noise at frequencies below 500 Hz and consist of compound acoustic mounts for the acoustic isolation of diesel engines, diesel generator sets, gas turbines, gas turbine generator sets, propulsion motors or propulsion reduction gears, ''specially designed'' for sound or vibration isolation and having an intermediate mass exceeding 30% of the equipment to be mounted;

o.3.b. 'Active noise reduction or cancellation systems' or magnetic bearings, ''specially designed'' for power transmission systems;

**Technical Note:** 'Active noise reduction or cancellation systems' incorporate electronic control systems capable of actively reducing equipment vibration by the generation of anti-noise or anti-vibration signals directly to the source.

p. Pumpjet propulsion systems having all of the following:

p.1. Power output exceeding 2.5 MW; *and*

p.2. Using divergent nozzle and flow conditioning vane techniques to improve propulsive efficiency or reduce propulsion-generated underwater-radiated noise;

q. Underwater swimming and diving equipment as follows;

q.1. Closed circuit rebreathers;

q.2. Semi-closed circuit rebreathers;

**Note:** 8A002.q does not control individual rebreathers for personal use when accompanying their users.

*N.B. For equipment and devices ''specially designed'' for military use see ECCN 8A620.f.*

r. Diver deterrent acoustic systems ''specially designed'' or modified to disrupt divers and having a sound pressure level equal to or exceeding 190 dB (reference 1 μPa at 1 m) at frequencies of 200 Hz and below.

**Note 1:** 8A002.r does not apply to diver deterrent systems based on under-water-explosive devices, air guns or combustible sources.

**Note 2:** 8A002.r includes diver deterrent acoustic systems that use spark gap sources, also known as plasma sound sources.

■ 54. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8, ECCN 8C001 is revised to read as follows:

**8C001 'Syntactic foam' designed for underwater use and having all of the following (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country Chart (see Supp. No.1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (see Part 740 for a Description of All License Exceptions)**

*LVS:* N/A
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* See also 8A002.a.4.
*Related Definition:* 'Syntactic foam' consists of hollow spheres of plastic or glass embedded in a resin ''matrix.''
*Items:*

a. Designed for marine depths exceeding 1,000 m; *and*

b. A density less than 561 kg/m$^3$.

■ 55. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9A001 is revised to read as follows:

**9A001 Aero gas turbine engines having any of the following (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, MT, AT

| *Control(s)* | *Country Chart (See Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| MT applies to only to those engines that meet the characteristics listed in 9A101. | MT Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* N/A
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* See also *9A101* and *9A991*
*Related Definitions:* N/A
*Items:*

a. Incorporating any of the ''technologies'' controlled by 9E003.a, 9E003.h, or 9E003.i; *or*

**Note 1:** 9A001.a. does not control aero gas turbine engines which meet all of the following:

a. Certified by the civil aviation authority in a country listed in Supplement No. 1 to Part 743; *and*

b. Intended to power non-military manned ''aircraft'' for which any of the following has been issued by a Wassenaar Arrangement Participating State listed in Supplement No. 1 to Part 743 for the ''aircraft'' with this specific engine type:

b.1. A civil type certificate; *or*

b.2. An equivalent document recognized by the International Civil Aviation Organization (ICAO).

**Note 2:** 9A001.a does not apply to aero gas turbine engines for Auxiliary Power Units (APUs) approved by the civil aviation authority in a Wassenaar Arrangement Participating State (see Supplement No. 1 to part 743 of the EAR).

b. Designed to power an ''aircraft'' designed to cruise at Mach 1 or higher, for more than 30 minutes.

■ 56. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9A004 is revised to read as follows:

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

**License Requirements**

*Reason for Control:* NS and AT

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

**License Requirements Note:** 9A004.b through .f are controlled under ECCN 9A515.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* N/A
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* (1) See also 9A104, 9A515, and 9B515. (2) See ECCNs 9E001 (''development'') and 9E002 (''production'') for technology for items controlled by this entry. (3) See USML Categories IV for the space launch vehicles and XV for other spacecraft that are ''subject to the ITAR'' (see 22 CFR parts 120 through 130).
*Related Definition:* N/A
*Items:*

a. Space launch vehicles;

b. ''Spacecraft'';

c. ''Spacecraft buses'';

d. ''Spacecraft payloads'' incorporating items specified by 3A001.b.1.a.4, 3A002.g, 5A001.a.1, 5A001.b.3, 5A002.c, 5A002.e,

6A002.a.1, 6A002.a.2, 6A002.b, 6A002.d, 6A003.b, 6A004.c, 6A004.e, 6A008.d, 6A008.e, 6A008.k, 6A008.l or 9A010.c;

e. On-board systems or equipment, specially designed for ''spacecraft'' and having any of the following functions:

e.1. 'Command and telemetry data handling';

**Note:** For the purpose of 9A004.e.1, 'command and telemetry data handling' includes bus data management, storage, and processing.

e.2. 'Payload data handling'; *or*

**Note:** For the purpose of 9A004.e.2, 'payload data handling' includes payload data management, storage, and processing.

e.3. 'Attitude and orbit control';

**Note:** For the purpose of 9A004.e.3, 'attitude and orbit control' includes sensing and actuation to determine and control the position and orientation of a ''spacecraft''.

*N.B.: Equipment specially designed for military use is* ''*subject to the ITAR*''*. See 22 CFR parts 120 through 130.*

f. Terrestrial equipment specially designed for ''spacecraft,'' as follows:

f.1. Telemetry and telecommand equipment;

f.2. Simulators.

g. through t. [Reserved]

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

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

v.1. Enumerated or controlled in the USML;

v.2. Microelectronic circuits;

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

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

w. The International Space Station being developed, launched, and operated under the supervision of the U.S. National Aeronautics and Space Administration.

x. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''specially designed'' for the International Space Station.

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

■ 57. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9A515 is revised to read as follows:

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

**License Requirements**

*Reason for Control:* NS, RS, MT, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry, except .e and .y. | NS Column 1 |
| RS applies to entire entry, except .e and .y. | RS Column 1 |
| RS applies to 9A515.e .. | RS Column 2 |
| MT applies to microcircuits in 9A515.d and 9A515.e.2 when ''usable in'' ''missiles'' for protecting ''missiles'' against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects). | MT Column 1 |
| AT applies to entire entry. | AT Column 1 |

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

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $1500
*GBS:* N/A
*CIV:* N/A

**Special Conditions for STA**

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

**List of Items Controlled**

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

*Related Definitions:* 'Microcircuit' means a device in which a number of passive or active elements are considered as indivisibly associated on or within a continuous structure to perform the function of a circuit.

*Items:*

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

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

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

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

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

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

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

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

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

c. [Reserved]

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

d.1. A total dose of $5 \times 10^5$ Rads (Si) ($5 \times 10^3$ Gy (Si));

d.2. A dose rate upset threshold of $5 \times 10^8$ Rads (Si)/sec ($5 \times 10^6$ Gy (Si)/sec);

d.3. A neutron dose of $1 \times 10^{14}$ n/cm$^2$ (1 MeV equivalent);

d.4. An uncorrected single event upset sensitivity of $1 \times 10^{-10}$ errors/bit/day or less, for the CREME–MC geosynchronous orbit, Solar Minimum Environment for heavy ion flux; and

d.5. An uncorrected single event upset sensitivity of $1 \times 10^{-3}$ errors/part or less for a fluence of $1 \times 10^7$ protons/cm$^2$ for proton energy greater than 50 MeV.

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

e.1. A total dose $\geq 1 \times 10^5$ Rads (Si) ($1 \times 10^3$ Gy(Si)) and $< 5 \times 10^5$ Rads (Si) ($5 \times 10^3$ Gy(Si)); and a single event effect (SEE) (*i.e.,* single event latchup (SEL), single event burnout (SEB), or single event gate rupture (SEGR)) immunity to a linear energy transfer (LET) $\geq$80 MeV − cm2/mg; or

e.2. A total dose $\geq 5 \times 10^5$ Rads (Si) ($5 \times 10^3$ Gy (Si)) and not described in 9A515.d.

**Note 1 to 9A515.d and .e:** Application specific integrated circuits (ASICs), integrated circuits developed and produced for a specific application or function, specifically designed or modified for defense articles and not in normal commercial use are controlled by Category XI(c) of the USML regardless of characteristics.

**Note 2 to 9A515.d and .e:** See 3A001.a for controls on radiation-hardened microelectronic circuits ''subject to the EAR'' that are not controlled by 9A515.d or 9A515.e.

f. Pressure suits (*i.e.,* space suits) capable of operating at altitudes 55,000 feet above sea level.

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

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

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

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

h. through w. [Reserved]

x. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''specially designed'' for defense articles controlled by USML Category XV or items controlled by 9A515, and that are NOT:

x.1. Enumerated or controlled in the USML or elsewhere within ECCNs 9A515 or 9A004;

x.2. Microelectronic circuits and discrete electronic components;

x.3. Described in ECCNs 7A004 or 7A104;

x.4. Described in an ECCN containing ''space-qualified'' as a control criterion (*i.e.,* 3A001.b.1, 3A001.e.4, 3A002.g.1, 3A991.o, 3A992.b.3, 6A002.a.1, 6A002.b.2, 6A002.d.1, 6A004.c and .d, 6A008.j.1, 6A998.b, or 7A003.d.2);

x.5. Microwave solid state amplifiers and microwave assemblies (refer to ECCN 3A001.b.4 for controls on these items);

x.6. Travelling wave tube amplifiers (refer to ECCN 3A001.b.8 for controls on these items); or

x.7. Elsewhere specified in ECCN 9A515.y.

**Note to 9A515.x:** ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in USML subcategory XV(e) or enumerated in other USML categories are subject to the controls of that paragraph or category.

y. Items that would otherwise be within the scope of ECCN 9A515.x but that have been identified in an interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e) as warranting control in 9A515.y.

y.1. Discrete electronic components not specified in 9A515.e; and

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

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

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

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

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

■ 58. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9B002 is revised to read as follows:

**9B002 On-line (real time) control systems, instrumentation (including sensors) or automated data acquisition and processing equipment, having all of the following (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, MT, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| MT applies to equipment for engines controlled under 9A001 for MT reasons and for engines controlled under 9A101. | MT Column 1 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $3,000, except N/A for MT
*GBS:* Yes, except N/A for MT
*CIV:* Yes, except N/A for MT

**List of Items Controlled**

*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

a. ''Specially designed'' for the ''development'' of gas turbine engines, assemblies, ''parts'' or ''components''; *and*

b. Incorporating any of the ''technologies'' controlled by 9E003.h or 9E003.i.

■ 59. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9B009 is revised to read as follows:

**9B009 Tooling ''specially designed'' for producing gas turbine engine powder metallurgy rotor ''parts'' or ''components'' having all of the following (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 2 |
| AT applies to entire entry. | AT Column 1 |

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* $5,000
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* See 9B002.
*Related Definitions:* N/A
*Items:*

a. Designed to operate at stress levels of 60% of Ultimate Tensile Strength (UTS) or more measured at a temperature of 873 K (600 °C); *and*

b. Designed to operate at a temperature of 873 K (600 °C) or more.

**Note:** 9B009 does not specify tooling for the production of powder.

■ 60. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9, ECCN 9E003 is revised to read as follows:

**9E003 Other ''technology'' as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, SI, AT

| *Control(s)* | *Country chart (see Supp. No. 1 to part 738)* |
|---|---|
| NS applies to entire entry. | NS Column 1 |
| SI applies to 9E003.a.1 through a.8, .h, .i, and .k. | See § 742.14 of the EAR for additional information |
| AT applies to entire entry. | AT Column 1 |

**Reporting Requirements**

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*CIV:* N/A
*TSR:* N/A

**Special Conditions for STA**

*STA:* License Exception STA may not be used to ship or transmit any technology in 9E003.a.1, 9E003.a.2 to a.5, 9E003.a.8, or 9E003.h to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

**List of Items Controlled**

*Related Controls:* (1) Hot section ''technology'' specifically designed, modified, or equipped for military uses or purposes, or developed principally with U.S. Department of Defense funding, is ''subject to the ITAR'' (see 22 CFR parts 120 through 130). (2) ''Technology'' is subject to the EAR when actually applied to a commercial ''aircraft'' engine program. Exporters may seek to establish commercial application either on a case-by-case basis through submission of documentation demonstrating application to a commercial program in requesting an export license from the Department Commerce in respect to a specific export, or in the case of use for broad categories of ''aircraft,'' engines, ''parts'' or ''components,'' a commodity jurisdiction determination from the Department of State.

*Related Definitions:* N/A

*Items:*

a. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following gas turbine engine ''parts,'' ''components'' or systems:

a.1. Gas turbine blades, vanes or ''tip shrouds'', made from directionally solidified (DS) or single crystal (SC) alloys and having (in the 001 Miller Index Direction) a stress-rupture life exceeding 400 hours at 1,273 K (1,000 °C) at a stress of 200 MPa, based on the average property values;

**Technical Note:** For the purposes of 9E003.a.1, stress-rupture life testing is typically conducted on a test specimen.

a.2. Combustors having any of the following:

a.2.a. 'Thermally decoupled liners' designed to operate at 'combustor exit temperature' exceeding 1,883K (1,610 °C);

a.2.b. Non-metallic liners;

a.2.c. Non-metallic shells; *or*

a.2. d. Liners designed to operate at 'combustor exit temperature' exceeding 1,883K (1,610 °C) and having holes that meet the parameters specified by 9E003.c;

**Note:** The ''required'' ''technology'' for holes in 9E003.a.2 is limited to the derivation of the geometry and location of the holes.

**Technical Notes:**

1. 'Thermally decoupled liners' are liners that feature at least a support structure designed to carry mechanical loads and a combustion facing structure designed to protect the support structure from the heat of combustion. The combustion facing structure and support structure have independent thermal displacement (mechanical displacement due to thermal load) with respect to one another, *i.e.* they are thermally decoupled.

2. 'Combustor exit temperature' is the bulk average gas path total (stagnation) temperature between the combustor exit plane and the leading edge of the turbine inlet guide vane (*i.e.,* measured at engine station T40 as defined in SAE ARP 755A) when the engine is running in a 'steady state mode' of operation at the certificated maximum continuous operating temperature.

*N.B.: See 9E003.c for ''technology'' ''required'' for manufacturing cooling holes.*

a.3. ''Parts'' or ''components,'' that are any of the following:

a.3.a. Manufactured from organic ''composite'' materials designed to operate above 588 K (315 °C);

a.3.b. Manufactured from any of the following:

a.3.b.1. Metal ''matrix'' ''composites'' reinforced by any of the following:

a.3.b.1.a. Materials controlled by 1C007;

a.3.b.1.b. ''Fibrous or filamentary materials'' specified by 1C010; *or*

a.3.b.1.c. Aluminides specified by 1C002.a; *or*

a.3.b.2. Ceramic ''matrix'' ''composites'' specified by 1C007; *or*

a.3.c. Stators, vanes, blades, tip seals (shrouds), rotating blings, rotating blisks or 'splitter ducts', that are all of the following:

a.3.c.1. Not specified in 9E003.a.3.a;

a.3.c.2. Designed for compressors or fans; *and*

a.3.c.3. Manufactured from material controlled by 1C010.e with resins controlled by 1C008;

**Technical Note:** A 'splitter duct' performs the initial separation of the air-mass flow between the bypass and core sections of the engine.

a.4. Uncooled turbine blades, vanes or ''tip shrouds'' designed to operate at a 'gas path temperature' of 1,373 K (1,100 °C) or more;

a.5. Cooled turbine blades, vanes or ''tip-shrouds'', other than those described in 9E003.a.1, designed to operate at a 'gas path temperature' of 1,693 K (1,420 °C) or more;

**Technical Notes:**

1. 'Gas path temperature' is the bulk average gas path total (stagnation) temperature at the leading edge plane of the turbine component when the engine is running in a 'steady state mode' of operation at the certificated or specified maximum continuous operating temperature.

2. The term 'steady state mode' defines engine operation conditions, where the engine parameters, such as thrust/power, rpm and others, have no appreciable fluctuations, when the ambient air temperature and pressure at the engine inlet are constant.

a.6. Airfoil-to-disk blade combinations using solid state joining;

a.7. Gas turbine engine ''parts'' or ''components'' using ''diffusion bonding'' ''technology'' controlled by 2E003.b;

a.8. 'Damage tolerant' gas turbine engine rotor ''parts'' or ''components'' using powder metallurgy materials controlled by 1C002.b; *or*

**Technical Note:** 'Damage tolerant' ''parts'' and ''components'' are designed using methodology and substantiation to predict and limit crack growth.

a.9. [Reserved]

*N.B.: For ''FADEC systems'', see 9E003.h.*

a.10. [Reserved]

*N.B.: For adjustable flow path geometry, see 9E003.i.*

a.11. Hollow fan blades;

b. ''Technology'' ''required'' for the ''development'' or ''production'' of any of the following:

b.1. Wind tunnel aero-models equipped with non-intrusive sensors capable of transmitting data from the sensors to the data acquisition system; *or*

b.2. ''Composite'' propeller blades or propfans, capable of absorbing more than 2,000 kW at flight speeds exceeding Mach 0.55;

c. ''Technology'' ''required'' for manufacturing cooling holes, in gas turbine engine ''parts'' or ''components'' incorporating any of the ''technologies'' specified by 9E003.a.1, 9E003.a.2 or 9E003.a.5, and having any of the following:

c.1. Having all of the following:

c.1.a. Minimum 'cross-sectional area' less than 0.45 $mm^2$;

c.1.b. 'Hole shape ratio' greater than 4.52; *and*

c.1.c. 'Incidence angle' equal to or less than 25°; *or*

c.2. Having all of the following:

c.2.a. Minimum 'cross-sectional area' less than 0.12 $mm^2$;

c.2.b. 'Hole shape ratio' greater than 5.65; *and*

c.2.c. 'Incidence angle' more than 25°;

**Note:** 9E003.c does not apply to ''technology'' for manufacturing constant radius cylindrical holes that are straight through and enter and exit on the external surfaces of the component.

**Technical Notes:**

1. For the purposes of 9E003.c, the 'cross-sectional area' is the area of the hole in the plane perpendicular to the hole axis.

2. For the purposes of 9E003.c, 'hole shape ratio' is the nominal length of the axis of the hole divided by the square root of its minimum 'cross-sectional area'.

3. For the purposes of 9E003.c, 'incidence angle' is the acute angle measured between the plane tangential to the airfoil surface and the hole axis at the point where the hole axis enters the airfoil surface.

4. Techniques for manufacturing holes in 9E003.c include ''laser'', water jet, Electro-Chemical Machining (ECM) or Electrical Discharge Machining (EDM) methods.

d. ''Technology'' ''required'' for the ''development'' or ''production'' of helicopter power transfer systems or tilt rotor or tilt wing ''aircraft'' power transfer systems;

e. ''Technology'' for the ''development'' or ''production'' of reciprocating diesel engine ground vehicle propulsion systems having all of the following:

e.1. 'Box volume' of 1.2 $m^3$ or less;

e.2. An overall power output of more than 750 kW based on 80/1269/EEC, ISO 2534 or national equivalents; *and*

e.3. Power density of more than 700 kW/$m^3$ of 'box volume';

**Technical Note:** 'Box volume' is the product of three perpendicular dimensions measured in the following way:

Length: The length of the crankshaft from front flange to flywheel face;

Width: The widest of any of the following:

a. The outside dimension from valve cover to valve cover;

b. The dimensions of the outside edges of the cylinder heads; or

c. The diameter of the flywheel housing;

Height: The largest of any of the following:

a. The dimension of the crankshaft centerline to the top plane of the valve cover (or cylinder head) plus twice the stroke; or

b. The diameter of the flywheel housing.

f. ''Technology'' ''required'' for the ''production'' of ''specially designed'' ''parts'' or ''components'' for high output diesel engines, as follows:

f.1. ''Technology'' ''required'' for the ''production'' of engine systems having all of the following ''parts'' and ''components'' employing ceramics materials controlled by 1C007:

f.1.a Cylinder liners;

f.1.b. Pistons;

f.1.c. Cylinder heads; *and*

f.1.d. One or more other ''part'' or ''component'' (including exhaust ports, turbochargers, valve guides, valve assemblies or insulated fuel injectors);

f.2. ''Technology'' ''required'' for the ''production'' of turbocharger systems with single-stage compressors and having all of the following:

f.2.a. Operating at pressure ratios of 4:1 or higher;

f.2.b. Mass flow in the range from 30 to 130 kg per minute; *and*

f.2.c. Variable flow area capability within the compressor or turbine sections;

f.3. ''Technology'' ''required'' for the ''production'' of fuel injection systems with a ''specially designed'' multifuel (*e.g.,* diesel or jet fuel) capability covering a viscosity range from diesel fuel (2.5 cSt at 310.8 K (37.8 °C)) down to gasoline fuel (0.5 cSt at 310.8 K (37.8 °C)) and having all of the following:

f.3.a. Injection amount in excess of 230 $mm^3$ per injection per cylinder; *and*

f.3.b. Electronic control features ''specially designed'' for switching governor characteristics automatically depending on fuel property to provide the same torque characteristics by using the appropriate sensors;

g. ''Technology'' ''required'' for the development'' or ''production'' of 'high output diesel engines' for solid, gas phase or liquid film (or combinations thereof) cylinder wall lubrication and permitting operation to temperatures exceeding 723 K (450 °C), measured on the cylinder wall at the top limit of travel of the top ring of the piston;

**Technical Note:** 'High output diesel engines' are diesel engines with a specified brake mean effective pressure of 1.8 MPa or more at a speed of 2,300 r.p.m., provided the rated speed is 2,300 r.p.m. or more.

h. ''Technology'' for gas turbine engine ''FADEC systems'' as follows:

h.1. ''Development'' ''technology'' for deriving the functional requirements for the ''parts'' or ''components'' necessary for the ''FADEC system'' to regulate engine thrust or shaft power (*e.g.,* feedback sensor time constants and accuracies, fuel valve slew rate);

h.2. ''Development'' or ''production'' ''technology'' for control and diagnostic ''parts'' or ''components'' unique to the ''FADEC system'' and used to regulate engine thrust or shaft power;

h.3. ''Development'' ''technology'' for the control law algorithms, including ''source code'', unique to the ''FADEC system'' and used to regulate engine thrust or shaft power;

**Note:** 9E003.h does not apply to technical data related to engine-''aircraft'' integration required by civil aviation authorities of one or more Wassenaar Arrangement Participating States (See Supplement No. 1 to part 743 of the EAR) to be published for general airline use (*e.g.,* installation manuals, operating instructions, instructions for continued airworthiness) or interface functions (*e.g.,* input/output processing, airframe thrust or shaft power demand).

i. ''Technology'' for adjustable flow path systems designed to maintain engine stability for gas generator turbines, fan or power turbines, or propelling nozzles, as follows:

i.1. ''Development'' ''technology'' for deriving the functional requirements for the ''parts'' or ''components'' that maintain engine stability;

i.2. ''Development'' or ''production'' ''technology'' for ''parts'' or ''components'' unique to the adjustable flow path system and that maintain engine stability;

i.3. ''Development'' ''technology'' for the control law algorithms, including ''source code'', unique to the adjustable flow path system and that maintain engine stability;

**Note:** 9E003.i does not apply to ''technology'' for any of the following:

a. Inlet guide vanes;

b. Variable pitch fans or prop-fans;

c. Variable compressor vanes;

d. Compressor bleed valves; or

e. Adjustable flow path geometry for reverse thrust.

j. ''Technology'' ''required'' for the ''development'' of wing-folding systems designed for fixed-wing ''aircraft'' powered by gas turbine engines.

N.B.: For ''technology'' ''required'' for the ''development'' of wing-folding systems designed for fixed-wing ''aircraft'' specified in USML Category VIII (a), see USML Category VIII (i).

k. ''Technology'' not otherwise controlled in 9E003.a.1 through a.8, a.10, and .h and used in the ''development'', ''production'', or overhaul of hot section ''parts'' or ''components'' of civil derivatives of military engines controlled on the U.S. Munitions List.

## Supplement No. 6 to Part 774 [Amended]

■ 61. Supplement No. 6 to part 774 ''Sensitive List'' is amended by:

■ a. Removing the reference to ''and .d'' in paragraph (1)(iii) and ''1C007.d'' in paragraphs (1)(vi) and (1)(vii);

■ b. Removing the phrase ''exceeding 12.5'' and adding in its place ''exceeding 16'' in paragraphs (4)(ii) and (4)(iii);

■ c. Removing the term ''user accessible programmability'' and adding in its place ''user-accessible programmability'' in paragraphs (6)(v) and (6)(viii);

■ d. Adding double quotes around the term ''Magnetic gradiometers'' in paragraph (6)(xxiv)(C);

■ e. Adding double quotes around the word ''magnetometers'' in paragraph (6)(xxv);

■ f. Removing and reserving paragraph (9)(viii);

■ g. Revising paragraph (9)(ix); and

■ h. Adding paragraph (9)(x).

The additions and revisions read as follows:

## Supplement No. 6 to Part 774—Sensitive List

* * * * *

(9) Category 9

* * * * *

(ix) 9E003.a.1 to a.5, a.8.

(x) 9E003.h.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 2017–16904 Filed 8–14–17; 8:45 am]

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