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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 271

#### Rules Regarding Availability of Information

**AGENCY:** Federal Open Market Committee, Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Federal Open Market Committee ("Committee") is finalizing its interim final rule amending the Committee's regulations under the Freedom of Information Act ("FOIA"). The FOIA Improvement Act of 2016 ("Improvement Act") amended the FOIA and required each federal agency to review its FOIA regulations and to issue certain revisions by December 27, 2016. Substantive revisions to the Committee's Rules Regarding Availability of Information ("Rules") were made to conform to the Improvement Act, and the Committee made other technical changes to the Rules in order to clarify the existing procedures for requesting information and to update contact information. The interim final rule became effective on December 27, 2016. This rulemaking finalizes the interim rule with minor edits for consistency and clarification.

**DATES:** This final rule is effective on November 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Matthew M. Luecke, Deputy Secretary, (202) 452-2576, Federal Open Market Committee, 20th Street and Constitution Avenue NW., Washington, DC 20551; or Amory Goldberg, Counsel, (202) 452-3124, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunications Device for Deaf (TDD) *only*, please call (202) 263-4869.

#### SUPPLEMENTARY INFORMATION:

### I. Overview of Final Rule

On December 27, 2016, the Committee published an interim final rule<sup>1</sup> amending its existing Rules found at 12 CFR part 271, in order to comply with the statutory changes required by the FOIA Improvement Act of 2016 ("Improvement Act").<sup>2</sup> Substantive amendments to the Committee's Rules, which were required by the Improvement Act, included revising the Committee's procedures for disclosing records under the FOIA, assessing fees, and notifying requestors of options for resolving disputes through the Committee's FOIA Public Liaison and the Office of Government Information Services ("OGIS") within the National Archives and Records Administration. In addition, the Committee made certain technical changes to the Rules to make the FOIA process easier for the public to navigate, such as making certain provisions clearer (removing obsolete language) and informing the public of additional electronic methods for submitting FOIA requests and administrative appeals. The interim final rule became effective on December 27, 2016, and the Committee accepted comments through February 27, 2017. The Committee is finalizing the interim rule with minor changes to paragraph (h)(3) of section 271.6 in response to a public comment.

### II. Summary of Public Comments and Final Rule

Interested persons were afforded the opportunity to participate in the rulemaking process through submission of written comments on the interim final rule during the open comment period. The Committee received one comment on the interim final rule from OGIS. OGIS asked the Committee to revise paragraph (h)(3) of section 271.6 of the Rules to require that a determination letter on an appeal inform appellants of the availability of OGIS's dispute resolution services. Although not required by the FOIA statute, this change is consistent with guidance issued by the Department of Justice's Office of Information Policy. Accordingly, the Committee has determined to edit the language in paragraph (h)(3) of section 271.6 to

notify an appealing party of the availability of OGIS's dispute resolution services as a nonexclusive alternative to litigation.

The Committee has determined not to adopt two other suggestions by OGIS. OGIS's proposed amendment would add a statement that "[d]ispute resolution is a voluntary process." This sentence appears to be unnecessary and repetitive given that the Committee is already advising appellants that dispute resolution services are available as a "nonexclusive alternative to litigation." OGIS also proposed language stating that the Committee will "actively engage as a partner to the process in an attempt to resolve the dispute" if the Committee participates in the OGIS dispute resolution process. Although active engagement in attempting to resolve a FOIA dispute is of course not unreasonable, the proposed sentence could create additional legal obligations not required under the FOIA or by the statutory amendments to the FOIA. Accordingly, aside from adding in language regarding the availability of OGIS's dispute resolution services as a nonexclusive alternative to litigation, the Committee is adopting section 271.6(h)(3) in the final rule without any further change.

### III. Regulatory Requirements

As the Committee noted in publishing the interim final rule, Congress required that the substantive changes to the Committee's Rules under the Improvement Act become effective by December 27, 2016, and the other amendments to the Committee's Rules were technical in nature. Thus, the Committee determined that the prior notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), did not apply to the rule. Because no notice of proposed rulemaking is required, these regulations are not a "rule" as defined by the Regulatory Flexibility Act, 5 U.S.C. 601(2), and no initial or final regulatory flexibility analysis is required.

#### List of Subjects in 12 CFR Part 271

Federal Open Market Committee, Freedom of information.

#### Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the Committee is adopting the interim final

<sup>1</sup> 81 FR 94934 (Dec. 27, 2016).

<sup>2</sup> Public Law 114-185, 130 Stat. 538 (enacted June 30, 2016).

rule published on December 27, 2016, at 81 FR 94934, as final with the following change:

## PART 271—RULES REGARDING AVAILABILITY OF INFORMATION

■ 1. The authority citation for part 271 continues to read as follows:

**Authority:** 5 U.S.C. 552; 12 U.S.C. 263.

■ 2. In § 271.6, paragraph (h)(3) is revised to read as follows:

### § 271.6 Processing requests.

\* \* \* \* \*

(h) \* \* \*

(3) The Committee, or such member of the Committee as is delegated the authority, shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Secretary. If an adverse determination is upheld on appeal, in whole or in part, the determination letter shall notify the appealing party of the right to seek judicial review and of the availability of dispute resolution services from the Office of Government Information Services as a nonexclusive alternative to litigation.

By order of the Federal Open Market Committee, September 19, 2017.

**Brian F. Madigan,**

*Secretary, Federal Open Market Committee.*

[FR Doc. 2017–21071 Filed 9–29–17; 8:45 am]

BILLING CODE 6210–01–P

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1002

[Docket No. CFPB–2017–0009]

RIN 3170–AA65

### Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule; official interpretation.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing a final rule that amends Regulation B to permit creditors additional flexibility in complying with Regulation B in order to facilitate compliance with Regulation C, adds certain model forms and removes others from Regulation B, and makes various other amendments to Regulation B and its commentary to facilitate the collection and retention of information about the ethnicity, sex, and race of certain mortgage applicants.

**DATES:** The rule is effective on January 1, 2018, except that the amendment to Appendix B to Part 1002 revising paragraph 1 and removing the existing “Uniform Residential Loan Application” form in amendatory instruction 6 is effective January 1, 2022.

#### FOR FURTHER INFORMATION CONTACT:

Shaakira Gold-Ramirez, Paralegal Specialist, Kathryn Lazarev, Counsel, or James Wylie, Senior Counsel, Office of Regulations, at 202–435–7700 or <https://www.consumerfinance.gov/policy-compliance/guidance/>.

#### SUPPLEMENTARY INFORMATION:

##### I. Summary of the Final Rule

Regulation B implements the Equal Credit Opportunity Act (ECOA)<sup>1</sup> and, in part, prohibits a creditor from inquiring about the race, color, religion, national origin, or sex of a credit applicant except under certain circumstances.<sup>2</sup> Two of these circumstances are a requirement for creditors to collect and retain certain information about applicants for certain dwelling-secured loans under Regulation B § 1002.13 and the similar applicant information that financial institutions are required to collect and report under Regulation C, 12 CFR part 1003, which implements the Home Mortgage Disclosure Act (HMDA).<sup>3</sup> Regulation B also includes certain optional model forms for use in complying with certain Regulation B requirements, including a model form for complying with § 1002.13 that is a 2004 version of the Uniform Residential Loan Application (URLA) issued by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).<sup>4</sup>

The HMDA requirement to collect and report applicant information was recently updated through a final rule amending Regulation C, published in October of 2015 (2015 HMDA Final Rule).<sup>5</sup> In 2016, the Enterprises issued a new version of the URLA that complies with the 2015 HMDA Final Rule (2016 URLA).<sup>6</sup> These changes to Regulation C and the URLA require updates to Regulation B to ensure consistency

among regulations and facilitate compliance with Regulation B and Regulation C by financial institutions. To address these issues, the Bureau issued a proposal on March 24, 2017, which was published in the **Federal Register** on April 4, 2017 (the 2017 ECOA Proposal).<sup>7</sup>

The Bureau is now publishing final amendments to Regulation B. The final rule will provide creditors flexibility in complying with Regulation B in order to facilitate compliance with Regulation C and transition to the 2016 URLA. The changes to Regulation B in this rule are summarized briefly in this section and discussed in detail below.

##### A. Scope

The final rule amends parts of Regulation B, its commentary, and its appendices, and affects when and how a creditor may collect information regarding the applicant’s ethnicity, race, and sex. The Regulation B creditors affected by this rule are primarily those creditors making mortgage loans subject to § 1002.13, which applies to purchase and refinance transactions involving an applicant’s primary residence. Financial institutions that report under Regulation C, have reported in the prior five years, or may report in the near future may also be affected by this rule. Creditors that utilize model forms from appendix B to Regulation B (the Regulation B appendix) for mortgage loans are also affected by the rule.

##### B. Changes to Applicant Information Collection for Regulation B Creditors

For Regulation B creditors making mortgage loans subject to § 1002.13, the rule will allow creditors to collect the applicant’s information using either the aggregate ethnicity and race categories or disaggregated ethnicity and race categories and subcategories, as set forth in appendix B to Regulation C (the Regulation C appendix) as amended by the 2015 HMDA Final Rule. The rule change therefore will not require Regulation B creditors that are not HMDA reporters (Regulation B-only creditors) to change their § 1002.13 compliance practices, but would allow them to adopt voluntarily new practices for collecting applicant information, including practices that would permit such creditors to transition to the 2016 URLA. Regulation B creditors will also be able to collect voluntarily certain information about applicants for certain mortgage loan scenarios as provided for in § 1002.5(a)(4). These scenarios

<sup>1</sup> 15 U.S.C. 1691 *et seq.*, 12 CFR part 1002.

<sup>2</sup> 12 CFR 1002.5(b).

<sup>3</sup> 12 CFR 1002.5(a)(2).

<sup>4</sup> Appendix B to 12 CFR part 1003.

<sup>5</sup> Home Mortgage Disclosure (Regulation C), 80 FR 66128 (Oct. 28, 2015).

<sup>6</sup> See Fannie Mae, Guide Forms, available at <https://www.fanniemae.com/singlefamily/selling-servicing-guide-forms> (last visited Sept. 6, 2017) (listing all selling and servicing guide forms); Freddie Mac, “Forms and Documents,” available at <http://www.freddie-mac.com/singlefamily/guide/> (last visited Sept. 6, 2017) (same).

<sup>7</sup> Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection, 82 FR 16307 (Apr. 4, 2017).

generally involve types of loans subject to Regulation C where a creditor voluntarily reports information under Regulation C, reported such information in the past five years, or may report such information in the near future.

#### *C. Changes to Applicant Information Collection for HMDA Reporters*

Many HMDA reporters are also subject to the collection requirements of § 1002.13. For those HMDA reporters, the rule provides clarity that compliance with applicant information collection under Regulation C generally satisfies similar requirements under Regulation B. HMDA reporters who at some point no longer are required to comply with HMDA can continue to collect certain applicant information as provided for in § 1002.5(a)(4).

#### *D. Changes to Regulation B Model Forms*

The rule makes certain changes to the Regulation B appendix. The rule amends the Regulation B appendix to provide two options: A model form for collecting aggregate applicant race and ethnicity information and a cross-reference to the Regulation C appendix model form for collecting disaggregated applicant race and ethnicity information. The rule also removes as outdated the existing version of the URLA contained in the Regulation B appendix, effective January 1, 2022. The rule does not add the 2016 URLA to the Regulation B appendix; that form is subject to a separate **Federal Register** notice issued by the Bureau acknowledging its compliance with certain provisions of Regulation B.<sup>8</sup>

## **II. Background**

### *A. Regulation B and Ethnicity and Race Information Collection*

With some exceptions, Regulation B § 1002.5(b) prohibits a creditor from inquiring about the race, color, religion, national origin, or sex of an applicant or any other person (protected applicant-characteristic information) in connection with a credit transaction. Section 1002.5(a)(2) provides several exceptions to that prohibition for information that creditors are required to request for certain dwelling-secured loans under § 1002.13, and for information required by a regulation, order, or agreement issued by or entered into with a court or an enforcement agency to monitor or enforce compliance with ECOA, Regulation B or

other Federal or State statutes or regulations, including Regulation C.

Section 1002.13 sets forth rules for collecting information about an applicant's ethnicity, race, sex, marital status, and age under Regulation B. (In this document, "applicant demographic information" refers to information about an applicant's ethnicity, race, or sex information, while "certain protected applicant-characteristic information" refers to all information collected under § 1002.13, including age and marital status.) Under § 1002.13(a)(1), creditors that receive an application for credit primarily for the purchase or refinancing of a dwelling occupied (or to be occupied) by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, must collect certain protected applicant-characteristic information, including specified race and ethnicity categories. These race and ethnicity categories correspond to the Office of Management and Budget (OMB) minimum standards for the classification of Federal data on ethnicity and race.<sup>9</sup> Certain of these categories include several more specific race, heritage, nationality, or country of origin groups. For example, Hispanic or Latino as defined by OMB for the 2010 Census refers to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.<sup>10</sup> Section 1002.13(b) through (c) provides instructions on the manner of collection. Unlike financial institutions covered by Regulation C, creditors subject to § 1002.13 but not to Regulation C are required only to collect and retain, but not to report, the required protected applicant-characteristic information.

### *B. 2015 HMDA Final Rule*

Regulation C implements HMDA and sets out specific requirements for the collection, recording, reporting, and disclosure of mortgage lending information, including a requirement to collect and report applicant demographic information. In July 2014, the Bureau proposed amendments to Regulation C to implement the Dodd-Frank Act changes to require collection, recording, and reporting of additional information to further HMDA's purposes, and to modernize the manner in which covered institutions report

HMDA data.<sup>11</sup> The Bureau published a final rule on October 28, 2015, amending Regulation C, with many of the amendments taking effect January 1, 2018.<sup>12</sup> (In this document, "current Regulation C" refers to Regulation C prior to January 1, 2018, and "revised Regulation C" refers to Regulation C as it will be in effect on or after January 1, 2018, as amended by the 2015 HMDA Final Rule.) For data collected in or after 2018, the 2015 HMDA Final Rule amends the requirement for collection and reporting of applicant demographic information. Specifically, covered institutions must permit applicants to self-identify their ethnicity and race using certain disaggregated ethnic and racial subcategories such as Mexican, Puerto Rican, or Cuban under the aggregate category Hispanic or Latino. Covered institutions will report the disaggregated information provided by applicants. However, revised Regulation C will not require or permit covered institutions to use the disaggregated subcategories when collecting and reporting the applicant's ethnicity and race based on visual observation or surname.<sup>13</sup>

Revised Regulation C § 1003.2(g)(1)(v) and 1003.2(g)(2)(ii) also introduces an exclusion from the definition of financial institution, from which the duty to report HMDA data flows, for entities that, among other criteria, originated fewer than 25 closed-end mortgage loans or fewer than 100 open-end lines of credit in either of the two preceding calendar years.<sup>14</sup> The Bureau recently adopted amendments to Regulation C that will temporarily increase the threshold for collecting and reporting data on certain loans. Financial institutions originating fewer than 500 open-end lines of credit in either of the preceding two years will not be required to begin collecting such data until January 1, 2020.<sup>15</sup> As a result, when revised Regulation C takes effect, an institution's obligation to collect and report information under Regulation C may change over time based on its prior loan volume.

<sup>11</sup> Home Mortgage Disclosure (Regulation C), 79 FR 51731 (Aug. 29, 2014).

<sup>12</sup> 80 FR 66128 (Oct. 28, 2015).

<sup>13</sup> *Id.* at 66314 (amendments to appendix B to Regulation C, effective January 1, 2018).

<sup>14</sup> *Id.* at 66148.

<sup>15</sup> 82 FR 43088, 43093–43096 (Sept. 13, 2017); see also *id.* at 43132, 43145 (§§ 1003.2(g)(1)(v)(B), (g)(2)(ii)(B), and 1003.3(c)(12)). This temporary increase in the open-end threshold will provide time for the Bureau to consider whether to initiate another rulemaking to address the appropriate level for the open-end threshold for data collected beginning January 1, 2020.

<sup>8</sup> Status of New Uniform Loan Application and Collection of Expanded Home Mortgage Information About Ethnicity and Race in 2017, 81 FR 66930 (Sept. 29, 2016).

<sup>9</sup> Revision of the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58782, 58788–90 (Oct. 30, 1997).

<sup>10</sup> See U.S. Census Bureau, *Overview of Race and Hispanic Origin*: 2010," at 2 (Mar. 2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

### C. Uniform Residential Loan Application

The Enterprises, currently under the conservatorship of the Federal Housing Finance Agency (FHFA), prepare and periodically revise the URLA used by many lenders for certain dwelling-related loans. A mortgage loan application must be documented using the URLA in the mortgage loan file for the loan to be eligible for sale to the Enterprises.<sup>16</sup> A version of the URLA dated January 2004 (2004 URLA) is included in the Regulation B appendix as a model form for use in complying with § 1002.13. The appendix provides that the use of its model forms is optional under Regulation B but that, if a creditor uses an appropriate appendix B model form, or modifies a form in accordance with instructions provided in appendix B, that creditor shall be deemed to be acting in compliance with § 1002.5(b) through (d).<sup>17</sup> The Enterprises, under the conservatorship of the FHFA, issued a revised and redesigned URLA on August 23, 2016 (2016 URLA).<sup>18</sup> Among other changes, the 2016 URLA includes a Demographic Information section (section 7) that addresses the requirements in revised Regulation C for collecting applicant demographic information, including the requirement that financial institutions permit applicants to self-identify using disaggregated ethnicity and race categories beginning January 1, 2018.

<sup>16</sup> Fannie Mae, "Selling Guide: Single Family Seller Servicer," at § B1-1-01 (Dec. 16, 2014), available at <https://www.fanniemae.com/content/guide/selling/b1/1/01.html>; Freddie Mac, "Single-Family Seller/Servicer Guide" (Sep. 21, 2016), § 3401.7, available at <http://www.freddie-mac.com/singlefamily/guide/bulletins/snapshot.html>.

<sup>17</sup> Comment appendix B-1 provides that a previous version of the URLA, dated October 1992, may be used by creditors without violating Regulation B. In addition, comment appendix B-2 provides that the home-improvement and energy loan application form prepared by the Enterprises, dated October 1986, complies with the requirements of Regulation B for some creditors but not others, depending on whether the creditor is governed by § 1002.13(a) or subject to a substitute monitoring program under § 1002.13(d). The Enterprises no longer offer the home-improvement and energy loan application form identified in comment app. B-2. See Fannie Mae, "Guide Forms," available at <https://www.fanniemae.com/singlefamily/selling-servicing-guide-forms> (last visited Sept. 6, 2017) (listing all current selling and servicing guide forms); see also Freddie Mac, "Forms and Documents," available at <http://www.freddie-mac.com/singlefamily/guide/> (last visited Sept. 6, 2017) (same).

<sup>18</sup> See Fannie Mae, "Uniform Residential Loan Application," <https://www.fanniemae.com/singlefamily/uniform-residential-loan-application#> (last visited Sept. 6, 2017); see also Press Release, Uniform Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, "The Redesigned URLA and ULAD Mapping Document Are Here!" (Aug. 23, 2016), available at <https://www.fanniemae.com/content/news/urla-announcement-august-2016.pdf>.

The Enterprises also made available a Demographic Information Addendum, which is identical in form to section 7 of the 2016 URLA.<sup>19</sup> The Enterprises have advised that the Demographic Information Addendum may be used by lenders at any time on or after January 1, 2017, as a replacement for section X (Information for Government Monitoring Purposes) in the current URLA, dated July 2005 (revised June 2009). The Enterprises have not yet provided a date when lenders may begin using the 2016 URLA or the date lenders are required to use the 2016 URLA (the cutover date), but have stated their intention to collaborate with industry stakeholders to help shape the implementation timeline for the 2016 URLA, with a goal to provide lenders with more precise information in 2017 regarding the cutover date.<sup>20</sup>

### D. Bureau Approval Notice

On September 23, 2016, the Bureau issued a notice concerning the collection of expanded information about ethnicity and race in 2017 (Bureau Approval Notice).<sup>21</sup> Before the January 1, 2018, effective date of most provisions of the 2015 HMDA Final Rule, inquiries to collect applicant demographic information using disaggregated ethnic and racial categories are not required by current Regulation C and would not have been allowed under Regulation B § 1002.5(a)(2), and therefore creditors would have been prohibited by Regulation B § 1002.5(b) from requesting applicants to self-identify using disaggregated ethnic and racial categories before January 1, 2018. The Bureau Approval Notice provided that, anytime from January 1, 2017 through December 31, 2017, a creditor may, at its option, permit applicants to self-identify using disaggregated ethnic and racial categories as instructed in the revised Regulation C appendix. During this period, a creditor adopting the practice of permitting applicants to self-identify

<sup>19</sup> Fannie Mae, Form 1003 and Freddie Mac Form 65, "Demographic Information Addendum," (Aug. 2016), available at <https://www.fanniemae.com/content/guide/form/urla-demographic-addendum.pdf>.

<sup>20</sup> Press Release, Uniform Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, "URLA Implementation Guidance and Update," (Nov. 1, 2016), available at <https://www.fanniemae.com/content/news/urla-announcement-november-2016.pdf>; Uniform Mortgage Data Program, Fannie Mae and Freddie Mac at the direction of the FHFA, "Uniform Residential Loan Application (URLA)/Uniform Loan Application Dataset (ULAD) FAQs," at ¶ 6 (Nov. 1, 2016), available at <https://www.fanniemae.com/content/faq/urla-ulad-faqs.pdf>.

<sup>21</sup> 81 FR 66930 (Sept. 29, 2016).

using disaggregated ethnic and racial categories as instructed in the revised Regulation C appendix shall be deemed to be in compliance with Regulation B § 1002.13(a)(i). In the same notice, the Bureau also determined that the relevant language in the 2016 URLA is in compliance with the regulatory provisions of Regulation B § 1002.5(b) through (d), regarding requests for protected applicant-characteristic information and certain other information. The notice provides that, although the use of the 2016 URLA by creditors is not required under Regulation B, a creditor that uses the 2016 URLA without any modification that would violate § 1002.5(b) through (d) acts in compliance with § 1002.5(b) through (d).

### III. Summary of the Rulemaking Process

#### A. Pre-Proposal Outreach

As part of the Bureau's outreach to financial institutions, vendors, and other mortgage industry participants to prepare for the implementation of the 2015 HMDA Final Rule, the Bureau received questions about the requirement to permit applicants to self-identify using disaggregated ethnicity and race categories. The Bureau also received questions as to how that requirement intersected with compliance obligations under Regulation B. The Bureau further received questions related to the Bureau Approval Notice about whether the approval for collecting disaggregated ethnicity and race categories under Regulation B in 2017 would be extended to 2018. In light of these inquiries, the Bureau determined that it would be beneficial to establish through rulemaking appropriate standards in Regulation B concerning the collection of an applicant's ethnicity and race information similar to those in revised Regulation C.

Because many of the financial institutions most affected by this proposed rule are supervised by the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (Board), and the National Credit Union Administration (NCUA), the Bureau conducted outreach to these agencies. The Bureau specifically sought input from these agencies concerning their use of applicant ethnicity and race information collected under § 1002.13 but not reported or anticipated to be reported under Regulation C and their views on appropriate standards for collection and retention of this information. The Bureau also conducted

outreach with other Federal agencies, including the Securities and Exchange Commission, the Department of Justice, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the Department of Veterans Affairs, the Department of Agriculture, the Department of the Treasury, and the Federal Financial Institutions Examination Counsel (FFIEC) concerning the proposed rule.

#### *B. The Bureau's Proposal*

On March 24, 2017, the Bureau issued the 2017 ECOA Proposal on its Web site. The proposal was published in the **Federal Register** on April 4, 2017.<sup>22</sup>

Specifically, the Bureau proposed an amendment to § 1002.13 to permit a creditor additional flexibility in how it collects applicant ethnicity and race information by allowing use of either aggregate or disaggregate ethnicity and race categories on an application-by-application basis. In addition, the Bureau proposed amendments adding § 1002.5(a)(4) to permit creditors to collect applicant demographic information when they would not otherwise be required to do so in certain scenarios where creditors may benefit from being able to adopt Regulation C compliance practices before they become required or maintain them when they are no longer required. The Bureau also proposed to remove the outdated 2004 URLA from the Regulation B appendix, add generic model forms for compliance with § 1002.13, and maintain approval of the 2016 URLA through a freestanding approval notice.

#### *C. Feedback Provided to the Bureau*

The Bureau received approximately 36 comments on the 2017 ECOA Proposal during the comment period from consumer advocacy groups, national and State trade associations, banks, individuals, and industry service providers. Comments are publicly available at <http://www.regulations.gov>. This information is discussed below in the section-by-section analysis and subsequent parts of the notice, as applicable. The Bureau considered the comments, and adopts a modified final rule as described below in the section-by-section analysis.

#### *Comments Related to 2015 HMDA Final Rule*

The Bureau received several comments on the proposal concerning the 2015 HMDA Final Rule. These comments were primarily from small

financial institutions. Commenters expressed concern that the data points added to Regulation C in the 2015 HMDA Final Rule burdened financial institutions and, because of this burden, the commenters encouraged the Bureau to reduce the HMDA data fields to only statutorily required fields. Commenters also requested that the Bureau increase the thresholds for being a HMDA reporter to a higher limit that would exempt more creditors from HMDA. The Bureau did not propose changes to Regulation C in this rulemaking. The Bureau considered these comments but does not believe that the comments are relevant to the 2017 ECOA Proposal and do not provide a basis to change the approach proposed by the Bureau in the 2017 ECOA Proposal. The issues raised by these comments were considered as part of the rulemaking to revise Regulation C and addressed in the 2015 HMDA Final Rule, and the Bureau has not reassessed those issues as part of this rulemaking, which concerns only issues relating to the alignment of collection of certain information about applicants under Regulation B and Regulation C and the status and use of the URLA. With respect to the open-end line of credit threshold for HMDA reporting, the Bureau adopted amendments to Regulation C that temporarily increases the open-end line of credit threshold to 500 until January 1, 2020.<sup>23</sup> This temporary increase in the open-end threshold will provide time for the Bureau to consider whether to initiate another rulemaking to address the appropriate level for the open-end threshold for data collected beginning January 1, 2020.

#### *Comments Related to Other Changes to Regulation B*

Some commenters proposed other changes to Regulation B unrelated to alignment with Regulation C or applicant demographic information collection for mortgage applicants. These proposed changes included establishing applicant demographic information collection, reporting, and public disclosure requirements for automobile creditors similar to HMDA, requiring adverse action notices in certain situations involving counteroffers, and adding record-keeping and applicant demographic information collection requirements for brokers and arrangers of credit. The Bureau did not propose these changes to Regulation B. The Bureau does not believe that these comments are relevant

to the 2017 ECOA Proposal and do not provide a basis to change the approach proposed by the Bureau in the 2017 ECOA Proposal.

#### **IV. Legal Authority**

The Bureau is issuing this final rule pursuant to its authority under section 703 of ECOA, as amended by section 1085 of the Dodd-Frank Act.<sup>24</sup> ECOA authorizes the Bureau to issue regulations to carry out the purposes of ECOA.<sup>25</sup> These regulations may contain but are not limited to such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion of ECOA, or to facilitate or substantiate compliance with ECOA.<sup>26</sup> A purpose of ECOA is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract) or other protected characteristics.<sup>27</sup> ECOA section 703 serves as a source of authority to establish rules concerning the taking and evaluation of credit applications, collection and retention of applicant demographic information concerning the applicant or co-applicant, use of designated model forms, and substantive requirements to carry out the purposes of ECOA.

The Bureau is also issuing this final rule pursuant to its authority under sections 1022 and 1061 of the Dodd-Frank Act. Under Dodd-Frank Act section 1022(b)(1), the Bureau has authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof.<sup>28</sup> Section 1061 of the Dodd-Frank Act transferred to the Bureau consumer financial protection functions previously vested in certain other Federal agencies, including the authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law and perform appropriate functions to promulgate and review such rules,

<sup>24</sup> 15 U.S.C. 1691b; Public Law 111–203, 124 Stat. 1376, 2083–84 (2010).

<sup>25</sup> 15 U.S.C. 1691b(a).

<sup>26</sup> *Id.*

<sup>27</sup> 12 CFR 1002.1(b).

<sup>28</sup> Public Law 111–203, 124 Stat. 1375, 1980 (2010) (codified at 12 U.S.C. 5512(b)(1)).

<sup>22</sup> 82 FR 16307 (Apr. 4, 2017).

<sup>23</sup> 82 FR 43088, 43093–43096 (Sept. 13, 2017); *see also id.* at 43132, 43145 (§§ 1003.2(g)(1)(v)(B), (g)(2)(ii)(B), and 1003.3(c)(12)).

orders, and guidelines.<sup>29</sup> Both ECOA and title X of the Dodd-Frank Act are consumer financial laws.<sup>30</sup> Accordingly, the Bureau has authority to issue regulations to administer ECOA.

## V. Section-by-Section Analysis

### Section 1002.5 Rules Concerning Requests for Information

#### 5(a) General Rules

Section 1002.5 provides rules concerning requests for information. In general, § 1002.5(b) prohibits a creditor from inquiring about protected applicant-characteristic information in connection with a credit transaction, except under certain circumstances. The Bureau proposed to amend § 1002.5(a)(4) to authorize creditors to collect such information under certain additional circumstances. In addition, the Bureau proposed to add commentary for § 1002.5(a)(4) to provide guidance and proposed amendments to comment 5(a)(2)–2 to make conforming changes and further align Regulation B and revised Regulation C.

#### 5(a)(4) Other Permissible Collection of Information

Section 1002.5(a)(2) provides that, notwithstanding the limitations in § 1002.5(b) through (d) on collecting protected applicant-characteristic information and other applicant information, a creditor shall request information for monitoring purposes as required by § 1002.13. Section 1002.5(a)(2) further provides that a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency to monitor or enforce compliance with ECOA, Regulation B, or other Federal or State statutes and regulations. However, § 1002.5(a)(2) does not authorize collection of information beyond what is required by law. The Bureau proposed to add § 1002.5(a)(4) to authorize a creditor to obtain information in certain additional specified circumstances other than as described in § 1002.5(a)(2). Proposed § 1002.5(a)(4)(i) and (ii) would permit a creditor that is a financial institution under revised Regulation C § 1003.2(g) to collect demographic information of an applicant for a closed-end mortgage loan or an open-end line of credit that is an excluded transaction under revised Regulation C § 1003.3(c)(11) or § 1003.3(c)(12) if it submits HMDA data

concerning those applications and loans or if it submitted HMDA data concerning closed-end mortgage loans or open-end lines of credit in any of the preceding five calendar years.<sup>31</sup>

Proposed § 1002.5(a)(4)(iii) would permit a creditor that falls below both of the revised Regulation C loan-volume thresholds to continue to collect applicant demographic information for five calendar years after first becoming exempt from HMDA reporting. Proposed § 1002.5(a)(4)(iv) would permit a creditor that exceeds a revised Regulation C loan-volume threshold in the first year of a two-year threshold period to collect, in the second year, applicant demographic information for a loan that would otherwise be a covered loan under Regulation C. For the reasons provided below, the Bureau is adopting § 1002.5(a)(4)(i) through (iv) as proposed. In addition, the Bureau is adopting new § 1002.5(a)(4)(v) and (vi) in response to comments, as discussed below.

The Bureau solicited comment on permitting the collection of applicant demographic information in the circumstances described in proposed § 1002.5(a)(4), and, in particular, regarding the proposed five-year time frame, and whether there are other specific, narrowly tailored circumstances not described in § 1002.5(a)(2) or proposed § 1002.5(a)(4) under which a creditor would benefit from being able to collect applicant demographic information for mortgage loan applicants. A large number of industry commenters supported proposed § 1002.5(a)(4) and the five-year timeframe for § 1002.5(a)(4)(i), (ii), and (iii). Commenters noted that being able to collect applicant demographic data when not required by HMDA would facilitate better data collection procedures, aid in retaining system and organizational knowledge, help prepare for reporting data in subsequent years, and help creditors transition to the 2016 URLA. Commenters noted that the five-year timeframe for § 1002.5(a)(4)(i), (ii), and (iii) was realistic and would provide enough time to allow

institutions to keep their systems updated, but not so long that it would be unlikely the institution would become a HMDA reporter again.

One commenter requested clarification that the voluntary collection under proposed § 1002.5(a)(4) was truly voluntary and not a new compliance requirement. Proposed § 1002.5(a)(4) provides authorization to collect applicant demographic information, but does not require collection in the circumstances described. As discussed below, though, a creditor must comply with the record retention requirements of § 1002.12 if it chooses to take advantage of the authorization in § 1002.5(a)(4). The Bureau also proposed comment 5(a)(4)–1 to provide guidance on proposed § 1002.5(a)(4) and to highlight the voluntary nature of the rule. The Bureau is finalizing this comment as proposed. Comment 5(a)(4)–1 provides that information regarding ethnicity, race, and sex that is not required to be collected pursuant to Regulation C may nevertheless be collected under the circumstances set forth in § 1002.5(a)(4) without violating § 1002.5(b). It also provides that the information must be retained pursuant to the requirements of § 1002.12.

Two industry commenters proposed two alternative voluntary collection authorizations that would replace proposed § 1002.5(a)(4). One alternative would permit collection of applicant demographic information for any loan secured by an applicant's dwelling with no timeframe restriction. The other alternative would permit collection of applicant demographic information for any covered loan under Regulation C with no timeframe restriction, even if the creditor was not a financial institution under Regulation C. The Bureau is not adopting these proposed alternatives. The primary difference between these proposals and the collection permitted by final § 1002.5(a)(4)(i), (ii), and (iii) would be the removal of the five-year timeframe. As the Bureau noted in the 2017 ECOA Proposal, without a time limit such voluntary collection would permit a creditor to collect protected applicant-characteristic information for a period of time that is too attenuated from any past Regulation C legal requirement and associated compliance process. While final § 1002.5(a)(4) provides a narrow exception to the general limitations in § 1002.5(b) through (d), these alternative proposals would create a much broader exception to the general limitations on collecting such information in Regulation B. The Bureau believes that such a broad exception could

<sup>29</sup> Public Law 111–203, 124 Stat. 1375, 2035–39 (2010) (codified at 12 U.S.C. 5581).

<sup>30</sup> 12 U.S.C. 5481(12), (14).

<sup>31</sup> The Bureau recently amended Regulation C to explicitly permit optional reporting of closed-end mortgage loans and open-end lines of credit even if a financial institution does not meet the applicable loan volume threshold. 82 FR 43088, 43100–43102 (Sept. 13, 2017); *see also id.* at 43132 (§ 1003.3(c)(11) and (12)). Regulation B § 1002.5(a)(4)(i) and (ii) as finalized in this rule correspond to those provisions in revised Regulation C and permit the collection of applicant demographic information necessary to facilitate that optional reporting. Other circumstances permitting voluntary collection of applicant demographic information finalized in this rule do not correspond to provisions in Regulation C addressing optional reporting.

significantly alter the limitations and would not be appropriate without further rulemaking and consideration.

Industry commenters proposed two additional, narrowly tailored exceptions that the Bureau is substantially adopting. One industry commenter proposed permitting collection for dwelling-secured loans made primarily for a business or commercial purpose that might be covered loans, regardless of whether or not they are for the purpose of home purchase, refinancing, or home improvement and therefore reportable under revised Regulation C. Under revised Regulation C, dwelling-secured loans made primarily for a business or commercial purpose are only required to be reported if they meet the definition of a home purchase, refinancing, or home improvement loan.<sup>32</sup> In contrast, dwelling-secured loans that are not made primarily for a business or commercial purpose are generally required to be reported even if they do not meet the definition of a home purchase, refinancing, or home improvement loan.<sup>33</sup> The Bureau believes that permitting collection of applicant demographic information in this narrowly tailored circumstance may be beneficial for some financial institutions because it would allow them to collect applicant demographic information early in the collection process, when they have determined that the loan would be dwelling secured and primarily for a business or commercial purpose but may not yet have determined whether it meets the definition of a home purchase loan, refinancing, or home improvement loan under revised Regulation C. Collection of applicant demographic information at that point in the application process may allow for more consistent collection and may be easier to integrate into the application process when compared with collection after HMDA coverage has been determined. The permitted collection may also alleviate concerns about violating § 1002.5(b) if a financial institution collects applicant demographic information for a particular dwelling-secured loan made primarily for a business or commercial purpose, based on the financial institution's belief that it is a home purchase loan, a refinancing, or a home improvement loan, but the financial institution later discovers that this belief was mistaken, and therefore collection of applicant demographic information was not required under Regulation C.

The Bureau is adopting § 1002.5(a)(4)(v) to address the commenter's suggestion. Section 1002.5(a)(4)(v) permits a creditor that is a financial institution under revised Regulation C § 1003.2(g) or that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under revised Regulation C § 1003.2(g) to collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under revised Regulation C § 1003.2(e) if not excluded by revised Regulation C § 1003.3(c)(10).

One industry commenter also noted that the 2016 URLA includes a form for the collection of applicant demographic information for additional borrowers and does not necessarily limit the collection to the applicant and the first co-applicant, even though Regulation C requires financial institutions to provide the ethnicity, race and sex information only for the applicant and first co-applicant.<sup>34</sup> The commenter suggested that the Bureau revise § 1002.5(b) to permit collection of demographic information for any additional co-applicants using the 2016 URLA. As discussed below in the section-by-section analysis for § 1002.13, the Bureau is amending § 1002.13(b) to permit, but not require, creditors to collect the information set forth in § 1002.13(a) from a second or additional co-applicant. With the introduction of the 2016 URLA the Bureau believes that permitting collection of applicant demographic information in this narrowly tailored circumstance may be beneficial for some financial institutions because it would allow them to use more easily standard forms for collection of applicant demographic information without identifying at the time of collection which applicants are the primary and first co-applicant. The Bureau is adopting § 1002.5(a)(4)(vi) to address the commenter's suggestion by clarifying that the collection of applicant demographic information for additional borrowers is permitted. Accordingly, § 1002.5(a)(4)(vi) permits a creditor that is collecting information regarding the ethnicity, race, and sex of an applicant or first co-applicant to collect information regarding the ethnicity, race, and sex of a second or additional co-applicant for a covered loan under Regulation C § 1003.2(e), or for a loan described in paragraphs (a)(4)(i) through (v). Authorization for this collection, consistent with the other

provisions of § 1002.5(a)(4), is not limited to collection using the 2016 URLA.

Having considered the comments received and for the reasons discussed above, the Bureau is finalizing § 1002.5(a)(4)(i) through (iv) generally as proposed with minor wording changes for clarity, finalizing new § 1002.5(a)(4)(v) and (vi), and finalizing the conforming amendments to comment 5(a)(2)–2 and new comment 5(a)(4)–1 as proposed. The Bureau believes that these provisions further the purposes of ECOA by easing overall burden on creditors and improving the quality of the data that is used to promote the availability of credit to all creditworthy applicants. The Bureau also believes that permitting creditors to collect certain protected applicant-characteristic information in these circumstances provides a narrow exception to the general limitations in § 1002.5(b) through (d) respects the purposes of those prohibitions.

#### *Section 1002.12 Record Retention*

Section 1002.12 provides rules concerning permissible and required record retention. In light of proposed § 1002.5(a)(4), the Bureau also proposed to amend § 1002.12(b)(1)(i) to require retention of certain protected applicant-characteristic information obtained pursuant to proposed § 1002.5(a)(4).

#### *12(b) Preservation of Records*

##### *12(b)(1) Applications*

##### *12(b)(1)(i)*

Section 1002.12(b)(1) provides that a creditor must retain certain records for 25 months, or 12 months for business credit.<sup>35</sup> Regulation B § 1002.2(g) defines business credit to mean, with certain exceptions, extensions of credit primarily for business or commercial purposes. Under § 1002.12(b)(1)(i), these records include any information required to be obtained concerning characteristics of credit applicants to monitor compliance with ECOA and Regulation B or other similar law. The Bureau proposed to amend § 1002.12(b)(1)(i) to include within its preservation requirements any information obtained pursuant to § 1002.5(a)(4). The Bureau also proposed to amend comment 12(b)–2 to require retention of applicant demographic information obtained pursuant to § 1002.5(a)(4).

Two commenters supported the proposal regarding record retention, noting that it would facilitate

<sup>32</sup> See revised Regulation C § 1003.3(c)(10). 80 FR 66128, 66139, and 66169 (Oct. 28, 2015).

<sup>33</sup> See revised Regulation C § 1003.2(e). 80 FR 66128, 80 FR 66140, and 66144 (Oct. 28, 2015).

<sup>34</sup> Fannie Mae, "Uniform Residential Loan Application," <https://www.fanniemae.com/singlefamily/uniform-residential-loan-application#> (last visited Sept. 6, 2017).

<sup>35</sup> Section 1002.12(b)(1) provides that creditors must retain records for 12 months for business credit, except as provided in § 1002.12(b)(5).

monitoring of fair lending laws and serve ECOA's purposes and that it seemed appropriate given the proposed amendments to § 1002.5(a)(4). One commenter noted that Regulation B § 1002.12(b)(1) provides a 25-month record retention period for most transactions, but a 12-month period for business credit transactions, and that the Bureau's proposal would create a longer retention period for business credit for which a creditor voluntarily collected applicant demographic information under proposed § 1002.5(a)(4). The Bureau acknowledges that the preamble to the proposed rule stated that § 1002.12(b)(1) required retention of certain records for 25 months and did not acknowledge the different 12 month period for business credit provided for in § 1002.12(b)(1). The Bureau did not intend to extend the record retention period under Regulation B for business credit transactions through the proposal and this final rule does not do so. The Bureau is finalizing the amendments to § 1002.12(b)(1)(i) and comment 12(b)–2 as proposed.

The Bureau believes that, if a creditor voluntarily collects applicant demographic information pursuant to § 1002.5(a)(4), the creditor should be required to maintain those records in the same manner as it does for protected applicant-characteristic information it is required to collect. This will allow the information to be available for monitoring and enforcing compliance with ECOA, Regulation B, and other Federal or State statutes or regulations. Without a corresponding record retention requirement, a creditor might collect but not retain the information, thus preventing the use of the information for these purposes.

#### *Section 1002.13 Information for Monitoring Purposes*

Section 1002.13 sets forth the scope, required information, and manner for the mandatory collection of certain protected applicant-characteristic information under Regulation B. The Bureau proposed to amend § 1002.13(a)(1)(i) to provide a creditor flexibility to collect applicant ethnicity and race information using either aggregate or disaggregated categories, thereby furthering the purposes of ECOA, reducing compliance burden, and facilitating use of the 2016 URLA. In addition, the Bureau proposed several revisions to § 1002.13(b) and (c) and its commentary to align further the collection requirements of Regulation B with revised Regulation C.

#### 13(a) Information To Be Requested

##### 13(a)(1)

##### 13(a)(1)(i)

Section 1002.13(a) sets forth certain protected applicant-characteristic information a creditor must collect for applications on certain dwelling-secured loans. Current § 1002.13(a)(1) requires that creditors collect information regarding the applicant's ethnicity and race using two aggregate ethnicity categories (Hispanic or Latino and Not Hispanic or Latino) and five aggregate race categories (American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White). Proposed § 1002.13(a)(1)(i) provided that a creditor must collect the applicant's information using either the aggregate ethnicity and race categories currently required or the ethnicity and race categories and subcategories set forth in the revised Regulation C appendix, which provide disaggregated ethnicity and race categories. Through this proposed change, creditors taking applications for loans subject to § 1002.13(a)(1) but not required to submit HMDA data under Regulation C would have the option of either maintaining their current collection practices or transitioning to the revised Regulation C collection practices and the 2016 URLA. The Bureau also proposed comments 13(a)–7 and 13(a)–8 to provide that a creditor that collects applicant information in compliance with the revised Regulation C appendix will be acting in compliance with § 1002.13 concerning the collection of an applicant's ethnicity, race, and sex information and to clarify that a creditor may choose on an application-by-application basis whether to collect aggregate or disaggregated information. For the reasons provided below, the Bureau is adopting § 1002.13(a) and comments 13(a)–7 and 13(a)–8 as proposed.

The Bureau solicited comment on its proposal to allow creditors to collect applicant race and ethnicity information using, at the creditor's option, either aggregate or disaggregated categories. A large number of industry commenters supported the proposed amendments to § 1002.13(a)(1)(i). Many of these commenters stated that the proposal would simplify the collection process and reduce regulatory burden by ensuring that creditors are not subject to differing collection requirements under Regulation B and Regulation C. Commenters also expressed the view that the proposal would ease compliance burden because it would

provide creditors the flexibility to use the method most suitable for them. Commenters also noted that it would facilitate use of the 2016 URLA. One industry commenter supporting the proposal stated that mandating disaggregated collection for all creditors would be unduly burdensome.

A number of commenters recommended alternative approaches to proposed § 1002.13(a)(1)(i). Two industry groups suggested that the Bureau remove § 1002.13 altogether. One of these commenters stated that the collection of applicant demographic information is duplicative of Regulation C and that removing this requirement in Regulation B would reduce burden. The other commenter asserted that collection of applicant demographic information requires significant time and resources for Regulation B-only creditors and that the information is virtually never used.

On the other hand, consumer advocacy groups and an industry service provider suggested that creditors be required to collect disaggregated ethnicity and race information after a multi-year phase in period. The consumer advocacy groups stated that mandatory disaggregated collection would ensure uniform data collection practices and facilitate fair lending analysis, including identifying potential discrimination against racial and ethnic subgroups. The consumer advocacy groups further expressed the view that mandatory disaggregated collection would prepare lenders to submit HMDA data in the future should they cross a reporting threshold and that the burden of mandatory disaggregated collection would not be significant because the 2016 URLA makes it easy to record these categories. An industry service provider also supported a uniform standard based on the requirements in revised Regulation C in order to reduce the costs of supporting dual collection methods. Similarly, an industry commenter stated that the collection methods used in Regulation B and Regulation C should match.

The Bureau is not adopting any of the alternatives suggested by commenters. Although the information collected under § 1002.13 and Regulation C overlap, in part, as discussed in the 2017 ECOA Proposal, regulators will rely on applicant demographic information collected under § 1002.13 to supervise and enforce fair lending laws, including for a substantial number of creditors that will not be required to report under revised Regulation C.<sup>36</sup>

<sup>36</sup> 82 FR 16307, 16313, and 16317–18 (Apr. 4, 2017).

Thus, the Bureau concludes that retaining § 1002.13 serves the purposes of ECOA to promote the availability of credit to all creditworthy applicants without regard to protected characteristics.

On the other hand, the Bureau believes that requiring disaggregated collection for Regulation B-only creditors would impose additional burden on creditors without significant benefits. Requiring disaggregated collection, even after a multi-year phase in period, would add complexity and burden to an already complex timeline that includes implementation of the 2015 HMDA Final Rule and transition to the 2016 URLA. As further discussed in the Section 1022(b) analysis below, the Bureau believes that the additional burden would have few benefits. The incremental benefits of this alternative are also likely to be low because many creditors will collect disaggregated categories under Regulation B in any case, either because they are required to do so under revised Regulation C or as part of the transition to the 2016 URLA. The Bureau is therefore not requiring the collection of disaggregated categories for Regulation B-only creditors. The Bureau may reevaluate the need for mandatory disaggregated collection under § 1002.13 after implementation of the 2015 HMDA Final Rule and transition to the 2016 URLA, when more information is available on creditor collection practices. If it appears that action is warranted, the Bureau will engage in further rulemaking as appropriate.

Two industry commenters, while supportive of the flexibility provided in the 2017 ECOA Proposal, sought clarification on how aggregate and disaggregated data will be evaluated against one another, including how aggregate information collected under Regulation B would be compared to disaggregated information collected under revised Regulation C. The commenters expressed concern that the optionality could result in dissimilar demographic reporting and potentially greater compliance burden for creditors who choose to continue to collect aggregate information. The Bureau does not believe that flexibility will result in additional burden and reiterates that § 1002.13(a)(1)(i) would permit a Regulation B-only creditor to maintain its existing practices and collect aggregate race and ethnicity categories. Moreover, because both methods use the same aggregate categories, a creditor can compare information collected under either method by rolling up the disaggregated subcategories into their corresponding aggregate categories. The

Bureau, however, declines to set forth specific instructions on how a data user should evaluate the information collected pursuant to § 1002.13 or Regulation C as the Bureau only sought comment on data collection practices under § 1002.13. Having considered the comments received and for the reasons discussed above, the Bureau is finalizing § 1002.13(a)(1)(i) as proposed.

An industry service provider asked the Bureau to provide guidance regarding whether the term “natural person” as used in Regulation B and Regulation C includes living trusts or sole proprietorships. Because Regulation B and Regulation C do not provide inconsistent instructions on the scope of the term “natural person,” the Bureau declines to provide additional guidance on this issue within this final rule, which, as related to § 1002.13, is limited to modifications that harmonize the collection requirements of Regulation B and Regulation C.

The Bureau proposed revised comment 13(a)–7 to provide that, for applications subject to § 1002.13(a)(1), a creditor that collects information about the ethnicity, race, and sex of an applicant in compliance with the requirements of the revised Regulation C appendix will be acting in compliance § 1002.13 concerning the collection of an applicant’s ethnicity, race, and sex information. The Bureau received one industry comment supporting alignment of the instructions in § 1002.13 with the revised Regulation C appendix. The commenter noted that differing instructions may lead to uncertainty and that Regulation B-only creditors would benefit from the additional instructions provided in revised Regulation C. No commenters opposed the proposed comment, and so the Bureau is finalizing comment 13(a)–7 as proposed.

As proposed, comment 13(a)–8 permitted a creditor to choose on an application-by-application basis whether to collect aggregate information pursuant to § 1002.13(a)(1)(i)(A) or disaggregated information pursuant to § 1002.13(a)(1)(i)(B). One industry commenter generally supported the proposal, noting the flexibility would reduce compliance burden. Another industry commenter was concerned about how a creditor would decide which collection method to use and whether the instruction could have a discriminatory impact. Various consumer advocacy groups also opposed proposed comment 13(a)–8, arguing that the instruction could encourage creditors to develop and maintain haphazard, inaccurate, and inconsistent data collection methods.

The Bureau is adopting comment 13(a)–8 as proposed. The Bureau believes that most creditors will voluntarily adopt a consistent collection method because uniform practices are generally easier and less costly for creditors to implement. If the Bureau were to require creditors to adopt a consistent collection method across applications, the Bureau would also need to issue additional guidance in the official commentary concerning how often and under what circumstances a creditor may change its collection method, among other implementation issues. The Bureau believes that such guidance would add complexity and compliance burden on creditors without furthering the purposes of ECOA, and so declines to do so as part of this rulemaking.

The Bureau received several additional comments about topics other than those raised by the Bureau in the 2017 ECOA Proposal. These included, for example, a comment supporting the collection of loan officers’ demographic information, a request to collect information on whether the applicant is divorced, a request for guidance on when previously gathered applicant demographic information can be used for new applications, and a request that the Bureau provide a safe harbor for information collected in 2017. The Bureau did not propose these changes in the 2017 ECOA Proposal. The Bureau does not believe that these comments are relevant to the 2017 ECOA Proposal and do not provide a basis to change the approach proposed by the Bureau in the 2017 ECOA Proposal, which, as related to § 1002.13, is limited to modifications that harmonize the collection requirements of Regulation B and Regulation C.

For the reasons discussed above, the Bureau is adopting § 1002.13(a)(1)(i) and comments 13(a)–7 and 13(a)–8 as proposed. The Bureau believes that creditors should not be subject to differing collection requirements, and that aligning the requirements of § 1002.13 and revised Regulation C furthers the purposes of ECOA by facilitating practices that promote the availability of credit to all creditworthy applicants.

#### 13(b) Obtaining Information

Section 1002.13(b) discusses how creditors may obtain applicant information required under § 1002.13(a). Among other instructions, current § 1002.13(b) provides that, if an applicant chooses not to provide some or all of the requested applicant demographic information, the creditor must, in certain circumstances, collect

the information on the basis of visual observation or surname. If a creditor collects disaggregated race and ethnicity information pursuant to § 1002.13(a)(1)(i)(B), proposed § 1002.13(b) provided that a creditor must comply with the restrictions on the collection of an applicant's ethnicity and race on the basis of visual observation or surname set forth in the revised Regulation C appendix, which limits such collection to the aggregate race and ethnicity categories. For the reasons provided below, the Bureau is adopting the revisions to § 1002.13(b) concerning the collection of ethnicity and race information on the basis of visual observation or surname as proposed. To further align the collection requirements of Regulation B and Regulation C, the Bureau is further amending § 1002.13(b) to permit, but not require, creditors to collect the information set forth in § 1002.13(a) from a second or additional co-applicant.

The few commenters who specifically addressed the Bureau's proposed amendment to § 1002.13(b) generally supported the modification, noting that it aligned with revised Regulation C and would facilitate consistent data collection. One commenter argued that the proposed rule would add complexity, however, as creditors would be required to report disaggregated information under revised Regulation C, permitted to collect such information under revised § 1002.13, but prohibited from collecting disaggregated information if the applicant does not provide it.

Two commenters opposed the collection of applicant demographic information on the basis of visual observation or surname under any circumstances. One commenter stated that extending the requirement to collect applicant demographic information on the basis of visual observation or surname to Regulation B-only creditors is outside the scope of ECOA. The commenters also argued that such collection is often inaccurate, cannot be relied upon for fair lending analysis, and is contrary to the purposes of ECOA. In support, one of the commenters cited a report finding that 10 million Americans change their racial and ethnic identifications between U.S. Census surveys. The same commenter also cited a report by health researchers discussing, among other topics, that observer-selected race, often used for death certificates, may not match self-selected race. The commenters proposed that the requirement to collect applicant demographic information on the basis of

visual observation or surname should be eliminated or that the Bureau provide additional instructions to aid creditors to identify an applicant's ethnicity and race based on visual observation or surname.

The Bureau will finalize as proposed the revisions to § 1002.13(b) concerning the collection of an applicant's ethnicity and race information on the basis of visual observation or surname. The requirement to collect, in certain circumstances, applicant demographic information on the basis of visual observation or surname where the applicant does not provide this information has been a longstanding requirement of § 1002.13(b). The amendment to § 1002.13(b) in the 2017 ECOA Proposal would not impose any new obligation on creditors to collect an applicant's ethnicity and race on the basis of visual observation or surname but, rather, would limit such collection to the aggregate ethnicity and race categories, even if the creditor permits an applicant to self-identify using the disaggregated categories. The proposed amendment would align § 1002.13 collection of disaggregated information with the collection requirements of Regulation C. While the Bureau acknowledges that this limitation on the collection of applicant demographic information involves some complexity, the Bureau believes that, on balance, aligning § 1002.13 collection methods with Regulation C will be less complex than introducing different rules for § 1002.13(b) alone.

The Bureau declines to consider the proposals to eliminate altogether the requirement to collect applicant demographic information on the basis of visual observation or surname in § 1002.13 or to provide further instructions on how to collect such information as both proposals go beyond the issues on which the Bureau solicited comment. Indeed, given that Regulation C requires collection of certain applicant demographic information on the basis of visual observation or surname, adopting either proposal would undermine the purpose of this rulemaking by imposing different requirements in Regulation B and Regulation C.<sup>37</sup> Moreover, the cited studies conclude only that some applicants may self-identify as different races over time and that visual observation of race is not always accurate. Thus, even if the Bureau were reconsidering its approach to visual observation or surname collection, which it is not, the Bureau does not believe the evidence submitted by the

commenters demonstrate that collection based on visual observation or surname do not serve the purposes of ECOA.

An industry service provider suggested the Bureau standardize the treatment of co-applicants between § 1002.13 and Regulation C. The commenter noted that the two rules imposed different requirements where there are multiple "applicants," stating that while § 1002.13 requires a financial institution to collect information from any applicant who is a natural person, the revised Regulation C appendix instructs a financial institution to provide applicant demographic information for only the applicant and the first co-applicant listed on the collection form. The industry service provider commented that this distinction makes data collection more complex and burdensome, and requested that the Bureau clarify the collection requirements for co-applicants under Regulation B.

The Bureau acknowledges that the requirement to collect or provide applicant demographic information from co-applicants differs between § 1002.13 and revised Regulation C. The Bureau concludes that these differences may create additional burden and complexity for creditors, who may need to modify their practices concerning co-applicant collection depending on whether collection is required under both Regulation B and revised Regulation C or only under revised Regulation C. The Bureau is therefore revising § 1002.13(b) to clarify that a creditor is permitted, but is not required, to collect the information set forth in § 1002.13(a) from a second or additional co-applicant. The Bureau believes this clarification will simplify collection practices and reduce compliance burden by aligning Regulation B and Regulation C. The clarification will also allow Regulation B-only creditors to maintain their existing practices under § 1002.13 if so desired. By providing flexibility and reducing burden, the Bureau believes this modification will further the purposes of ECOA by facilitating practices that promote the availability of credit to all creditworthy applicants. As discussed above in the section-by-section analysis for § 1002.5(a)(4), the Bureau is also adopting new § 1002.5(a)(4)(vi) to permit collection of applicant demographic information for second or additional co-applicants in certain circumstances, thereby providing additional optionality for creditors to maintain consistent collection practices under Regulation B and Regulation C.

<sup>37</sup> 80 FR 66128, 66187–88 (Oct. 28, 2015).

For the reasons discussed above, the Bureau is finalizing as proposed the revisions to § 1002.13(b) concerning the collection of ethnicity and race information on the basis of visual observation or surname. To facilitate compliance with Regulation B and further align the collection requirements of Regulations B and Regulation C, the Bureau is also amending § 1002.13(b) to permit, but not require, creditors to collect the information set forth in § 1002.13(a) from a second or additional co-applicant.

Current comment 13(b)–1 provides guidance on the forms and collection methods a creditor may use to collect applicant information under § 1002.13(a). In the 2017 ECOA Proposal, the Bureau proposed to amend comment 13(b)–1 to reference the data collection model forms the Bureau proposed to provide in the Regulation B appendix. The Bureau also proposed to revise comment 13(b)–1 to reiterate that when a creditor collects only aggregate ethnicity and race information pursuant to § 1002.13(a)(1)(i)(A), the applicant must be offered the option to select more than one racial designation. If a creditor collects applicant information pursuant to § 1002.13(a)(1)(i)(B), the applicant must be offered the option to select more than one ethnicity and more than one racial designation. The Bureau received no comments specifically addressing the revisions to proposed comment 13(b)–1, and so is finalizing it as proposed. Comments related to the data collection model forms are addressed in the section-by-section analysis of the Regulation B appendix.

#### 13(c) Disclosure to Applicant(s)

Section 1002.13(c) sets forth disclosures a creditor must provide to an applicant when collecting the information set forth in § 1002.13(a). Current comment 13(c)–1 provides, among other information, that the Regulation B appendix contains a sample disclosure. The Bureau proposed to amend comment 13(c)–1 to reference two data collection model forms the Bureau proposed to provide in the Regulation B appendix. The Bureau received no comments on proposed comment 13(c)–1, and so is finalizing comment 13(c)–1 as proposed. Comments related to the data collection model forms and the 2016 URLA are addressed in the section-by-section analysis of the Regulation B appendix.

#### Appendix B to Part 1002—Model Application Forms

Regulations B and C both contain an appendix B that provides model forms for use when collecting applicant

demographic information required under the regulations. The current Regulation B appendix includes the 2004 URLA as a model form. The current and revised Regulation C appendix include instructions and a data collection model form for collecting applicant demographic information.

The current Regulation B appendix includes five model forms, each designated for use in a particular type of consumer credit transaction. The fifth model form, the 2004 URLA, is described in the Regulation B appendix as appropriate for residential mortgage transactions and contains a model disclosure for use in complying with current § 1002.13. While use of the model forms is optional, if a creditor uses the appropriate model form, or modifies a form in accordance with the instructions provided in the Regulation B appendix, that creditor is deemed to be acting in compliance with § 1002.5(b) through (d).<sup>38</sup>

As discussed above, on September 23, 2016, the Bureau issued the Bureau Approval Notice, pursuant to section 706(e) of ECOA.<sup>39</sup> In the Bureau Approval Notice, the Bureau determined that, while a creditor is not required to use the 2016 URLA, a creditor that uses the form without any modification that would violate § 1002.5(b) through (d) would act in compliance with § 1002.5(b) through (d).<sup>40</sup> Unlike prior versions of the URLA, the 2016 URLA permits an applicant to select disaggregated ethnicity and race categories, as required under revised Regulation C.

Given the issuance of the Bureau Approval Notice and the modifications to § 1002.13, the Bureau proposed several revisions to the Regulation B appendix as discussed below.

#### Model Forms for Complying With Section 1002.13(a)(1)(i)

The Bureau proposed to revise the Regulation B appendix to provide two additional model forms for use in complying with § 1002.13. First, for creditors collecting disaggregated applicant demographic information pursuant to § 1002.13(a)(1)(i)(B) and (ii), the Bureau proposed to amend the Regulation B appendix to cross-reference the data collection model form included in the revised Regulation C appendix. Second, for creditors collecting aggregate applicant demographic information pursuant to § 1002.13(a)(1)(i)(A) and (ii), the Bureau

proposed to amend the Regulation B appendix to add a model form. The proposed model form substantially mirrors section X in the 2004 URLA and the data collection model form contained in the current Regulation C appendix. The Bureau received no comments opposing and one comment supporting the proposed amendments and so is finalizing the Regulation B appendix to provide alternative model forms as proposed.

In the 2017 ECOA Proposal, the Bureau also considered but did not propose the alternative of including the 2016 URLA as a model form in the Regulation B appendix.<sup>41</sup> No commenters opposed the decision not to include the 2016 URLA as a model form in the Regulation B appendix, and several commenters noted that the proposed rule would encourage use and transition to the 2016 URLA. Accordingly, the Bureau is finalizing the Regulation B appendix as proposed, without including the 2016 URLA.

One industry commenter requested clarification that use of the 2016 URLA complies with Regulation B. The Bureau believes that no additional approval is necessary: The Bureau Approval Notice provides that a creditor that uses the 2016 URLA without any modification that would violate § 1002.5(b) through (d) acts in compliance with § 1002.5(b) through (d).<sup>42</sup> Similarly, because the substance and form of section 7 of the 2016 URLA is substantially similar to the form the Bureau provides as a model form in Regulation C, the 2016 URLA may be used in complying with § 1002.13.

#### Removal of the 2004 URLA as a Model Form

The current Regulation B appendix includes the 2004 URLA as a model form for use in complying with § 1002.13. In light of the revisions to § 1002.13(a)(1)(i), the amendment to the Regulation B appendix to provide two additional model forms, and the fact that the Bureau separately approved use of the 2016 URLA in the Bureau Approval Notice, the Bureau proposed to remove the 2004 URLA as a model form in Regulation B. The Bureau proposed that the 2004 URLA be removed on the cutover date the Enterprises designate for use of the 2016 URLA or January 1, 2022, whichever comes first. The Bureau received no comments on the proposal to remove the 2004 URLA or the timing of the removal and so is finalizing removal of the 2004 URLA as proposed. The date

<sup>38</sup> Appendix B to part 1002, at paragraphs 1, 3.

<sup>39</sup> 81 FR 66930 (Sept. 23, 2016).

<sup>40</sup> *Id.*

<sup>41</sup> 82 FR 16307, 16315 (Apr. 4, 2017).

<sup>42</sup> 81 FR 66930 (Sept. 23, 2016).

for removal of the 2004 URLA from the Regulation B appendix is discussed further in the Effective Date section below.

#### Removal of the Official Commentary to Appendix B

Commentary to the Regulation B appendix includes a discussion of two forms created by the Enterprises that are no longer in use: A 1992 version of the URLA and a 1986 home-improvement and energy loan application form. Given that neither of these forms is currently used by the Enterprises, the Bureau proposed to remove in its entirety the commentary to the Regulation B appendix. The Bureau received no comments on its proposal and so is removing the commentary to the Regulation B appendix in this final rule.

#### VI. Effective Date

The Bureau proposed an effective date of January 1, 2018, which aligns with the effective date for the bulk of the revisions to Regulation C in the 2015 HMDA Final Rule. The effective date of the 2015 HMDA Final Rule applies to covered loans and applications with respect to which final action is taken beginning on January 1, 2018, even if the application is received in 2017. One commenter indicated that the Bureau's proposed effective date for this rule creates concerns that it does not indicate that the collection of disaggregated applicant demographic information is permitted for applications received in 2017 for which final action is taken in 2018. The commenter noted that the Bureau Approval Notice applied to all applications taken in 2017 and suggested that the proposed effective date for this rule sends a mixed message. The Bureau Approval Notice provides that, at any time from January 1, 2017, through December 31, 2017, a creditor may, at its option, permit applicants to self-identify using disaggregated ethnic and racial categories as instructed in revised Regulation C. During this period, a creditor adopting the practice of permitting applicants to self-identify using disaggregated ethnic and racial categories as instructed in the Regulation C appendix is not deemed to violate Regulation B § 1002.5(b). During this period, a creditor adopting the practice of permitting applicants to self-identify using disaggregated ethnic and racial categories as instructed in the Regulation C appendix is also deemed to be in compliance with Regulation B § 1002.13(a)(1)(i) even though applicants are asked to self-identify using categories other than those

explicitly provided in that section. Because the Bureau Approval Notice remains in effect for all of 2017, the amendments in this rule are not necessary to permit Regulation B-only creditors or HMDA reporters to collect disaggregated applicant demographic information for applications taken in 2017; they are already permitted to do so by the Bureau Approval Notice for any application for a covered loan under revised Regulation C § 1003.2(g) or any application subject to § 1002.13 for all of 2017.

The Bureau proposed as an effective date for the removal of the 2004 URLA from Regulation B appendix either the cutover date designated by the Enterprises for the mandatory use of the 2016 URLA or January 1, 2022. The Bureau did not receive any comments on the proposed effective date for this provision. Because the Enterprises have not announced a cutover date for the mandatory use of the 2016 URLA, the Bureau is finalizing January 1, 2022, as the effective date for the removal of the 2004 URLA from the Regulation B appendix.

The rule is effective on January 1, 2018, except that the amendment to the Regulation B appendix removing the existing "Uniform Residential Loan Application" form is effective January 1, 2022.

#### VII. Dodd-Frank Act Section 1022(b) Analysis

##### A. Overview

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts.<sup>43</sup> In the 2017 ECOA Proposal, the Bureau set forth a preliminary analysis of these effects, and the Bureau requested comment and submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts of the proposal. The Bureau received some comments on the topic. Comments on the benefits and costs of the rule are also discussed above in the section-by-section analysis of the preamble. The Bureau has consulted, or offered to consult with, the prudential regulators (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration,

and the Office of the Comptroller of the Currency), the Securities and Exchange Commission, the Department of Justice, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the Department of Veterans Affairs, the Department of Agriculture, and the Department of the Treasury, including regarding consistency with any prudential, market or systematic objectives administered by such agencies.

A purpose of ECOA, as implemented by Regulation B, is to promote the availability of credit to all creditworthy applicants without regard to protected characteristics. The final rule will make three substantive changes to Regulation B, along with other clarifications, minor changes, and technical corrections to align the language of Regulation B with Regulation C as amended by the 2015 HMDA Final Rule. The first will give persons who collect and retain race and ethnicity information in compliance with Regulation B the option of permitting applicants to self-identify using the disaggregated race and ethnicity categories required by revised Regulation C. In practice, this will allow entities that report race and ethnicity in accordance with revised Regulation C to comply with Regulation B without further action, while entities that do not report under Regulation C but record and retain race and ethnicity data under Regulation B will have the option of recording data either using the existing aggregated categories or the new disaggregated categories.

The Bureau believes that, absent this change, entities that currently report race and ethnicity data under Regulation C could conclude that they have different obligations under Regulation B and Regulation C once the 2015 HMDA Final Rule goes into effect on January 1, 2018. This would lead to unnecessary burden from collecting both aggregate and disaggregated data. Industry commenters noted this potential conflict and expressed their support for the proposal. By making disaggregated collection an option under Regulation B, entities who will report race and ethnicity information under revised Regulation C will also be in compliance with Regulation B with certainty. The Bureau believes that making collection of disaggregated race and ethnicity an option for all entities covered by Regulation B will pose little or no additional burden on those entities who are not HMDA reporters. The final rule may have some benefits to Regulation B-only creditors, as the current language of Regulation B would not allow these entities to use the 2016

<sup>43</sup> Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

URLA for the purpose of collecting race and ethnicity data, as the 2016 URLA uses the disaggregated race and ethnicity categories set forth in revised Regulation C and not the specific categories required by current Regulation B. Thus, the final rule has the added benefit that it will allow Regulation B-only creditors to use the 2016 URLA as an instrument to collect race and ethnicity information.

The second substantive change will remove the outdated 2004 URLA as a model form. The Bureau issued the Bureau Approval Notice under its authority in section 706(e) of ECOA on September 23, 2016, which provides that a creditor that uses the 2016 URLA without any modification that would violate § 1002.5(b) through (d) would act in compliance with § 1002.5(b) through (d). The Bureau is not adding the 2016 URLA as a model form in place of the 2004 version. Instead, the Bureau is providing for two alternative data collection model forms for the purpose of collecting ethnicity and race information. The Bureau believes this practice of acknowledging future versions of the URLA via a Bureau Approval Notice rather than a revision to Regulation B will reduce the risk that the model form included in Regulation B will become outdated in the future.

Finally, the Bureau is amending Regulation B and the associated commentary to allow creditors to collect ethnicity, race, and sex from mortgage applicants in certain cases where the creditor is not required to report under HMDA and Regulation C. These circumstances include when: (1) A creditor that is a financial institution under revised Regulation C § 1003.2(g), originates a closed-end mortgage loan or an open-end line of credit that is an excluded transaction under revised Regulation C § 1003.3(c)(11) or § 1003.3(c)(12), if it submits HMDA data concerning those applications and loans or if it submitted HMDA data concerning closed-end mortgage loans or open-end lines of credit in any of the preceding five calendar years; (2) a creditor that submitted HMDA data in any of the preceding five calendar years but is not currently a financial institution under Regulation C § 1003.2(g), collects demographic information of an applicant for a loan that would otherwise be a covered loan under Regulation C § 1003.2(e), if not excluded by Regulation C § 1003.3(c)(11) or § 1003.3(c)(12); (3) a creditor that exceeded an applicable loan volume threshold in the first year of the two-year threshold period provided in Regulation C § 1003.2(g), § 1003.3(c)(11), or § 1003.3(c)(12),

collects, in the second year, demographic information of an applicant for a loan that would otherwise be a covered loan under Regulation C § 12 CFR 1003.2(e), if the loan were not excluded by Regulation C § 1003.3(c)(11) or § 1003.3(c)(12); (4) a creditor that is a financial institution under Regulation C § 1003.2(g), or that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under Regulation C § 1003.2(g), collects demographic information of an applicant for a loan that would otherwise be a covered loan under Regulation C § 1003.2(e) if the loan were not excluded by Regulation C § 1003.3(c)(10); and (5) a creditor that collects demographic information of a second or additional co-applicant for a covered loan under Regulation C § 1003.2(e), or for a second or additional co-applicant for a loan described in amended § 1002.5(a)(4)(i) through (v). These changes will primarily benefit institutions that may be near the loan volume reporting threshold, such that they may be required to report under HMDA and Regulation C in some years and not others, or may be uncertain about their reporting status. The Bureau believes that allowing voluntary collection will reduce the burden of compliance with Regulation C on some entities and provide certainty regarding Regulation B compliance over time.

#### *B. Potential Benefits and Costs to Consumers and Covered Persons*

##### *Providing an Option To Collect Disaggregated Race and Ethnicity for Regulation B*

Relative to current Regulation B following the effective date of the 2015 HMDA Final Rule, the final rule provides clear benefits to entities that will be required to collect and report race and ethnicity data under HMDA. Currently the disaggregated race and ethnicity categories required by the amendments to Regulation C in the 2015 HMDA Final Rule, effective January 1, 2018, do not match the categories specified in current Regulation B. Because of the differences between the categories, some creditors required to collect and report race and ethnicity using the disaggregated categories set forth in revised Regulation C may be uncertain whether additional collection using aggregated categories would also be required to satisfy current Regulation B. Complying with both Regulations B and C would require burdensome and duplicative collection of race and ethnicity data at both the aggregated and disaggregated level. In practice, the final

rule simply makes clear that the existing collection required under revised Regulation C is sufficient for compliance with Regulation B.

The final rule may have benefits to consumers, to the extent that lending entities voluntarily choose to collect disaggregated race and ethnicity information. As discussed in the Section 1022(b) analysis for the 2015 HMDA Final Rule, collection of disaggregated race and ethnicity data can enhance the ability of regulators, researchers and community groups to conduct fair lending analysis. There are three reasons, however, that this rule will likely have a limited effect on fair lending analysis. First, Regulation B-only creditors will not be required to permit applicants to self-identify using disaggregated ethnicity and race categories, likely resulting in few creditors adopting disaggregated ethnicity and race categories. Second, many Regulation B-only creditors will be exempt from reporting under revised Regulation C because they originate fewer than 25 closed-end mortgage loans in each of the two preceding calendar years, which means both that few consumers would be affected and any disaggregated data would likely be too sparse for statistical analysis. Finally, demographic data retained by Regulation B-only creditors is not reported under Regulation C. Consequently, most oversight and analysis of demographic data retained by Regulation B-only creditors will be done only by regulators, whereas researchers and community groups also conduct analysis of HMDA data reported under Regulation C. The Bureau believes the final rule will not impose any costs on consumers.

The final rule may have benefits to some Regulation B-only creditors. Although these entities need not make any changes to their race and ethnicity collection procedures, they may desire to do so in the future by adopting the 2016 URLA. The Enterprises have announced that they will cease accepting older versions of the URLA at a date to be determined and require firms that sell to the Enterprises to use the 2016 URLA form. Some Regulation B-only creditors sell mortgages to the Enterprises, and would benefit from being able to use the 2016 URLA. The Enterprises, not the Bureau, mandate the adoption of the 2016 URLA. Therefore, the Bureau believes any operational costs from adopting the 2016 URLA are part of the normal course of business and are not a cost of the final rule.

In addition to the amendment to Regulation B in the proposal, the Bureau

considered two alternatives to address the differing race and ethnicity requirements of Regulation B and revised Regulation C. The Bureau considered requiring all creditors subject to the collection and retention requirement of Regulation B to permit applicants to self-identify using disaggregated race and ethnicity categories. To the extent that consumers would benefit from disaggregated race and ethnicity collection, this alternative would provide greater benefits than the Bureau's proposal. However, of the three limitations to consumer benefits listed above, only the first (that disaggregated categories would be optional) is alleviated by requiring the use of disaggregated race and ethnicity categories under Regulation B. It is still the case that due to the low volume of mortgages by many affected entities and the lack of reporting, disaggregated race and ethnicity data may have limited benefits. Finally, the Bureau believes many entities will adopt the 2016 URLA as part of the course of business and thus permit applicants to self-identify using disaggregated race and ethnicity categories.

At the same time, mandatory use of disaggregated collection of race and ethnicity categories would impose greater costs on creditors than the Bureau's proposal, particularly on smaller entities. These costs include greater operational costs and one-time database upgrades. Unlike the costs associated with the adoption of the 2016 URLA, these costs would not otherwise be incurred in the normal course of business. The Bureau requested comments on both the costs and benefits associated with this alternative approach.

A consumer advocacy group commenter argued that the Bureau should adopt the alternative of requiring all persons subject to the collection and retention requirement of Regulation B to permit applicants to self-identify using disaggregated race and ethnicity categories. The commenter disputed the Bureau's assessment that the potential alternative would impose substantial costs on Regulation B-only creditors. The commenter argued that the availability of the 2016 URLA would reduce the cost of collecting disaggregated race and ethnicity information, and advocated for a two-year implementation period for mandatory disaggregated collection to further reduce the costs. However, the commenter did not address the Bureau's conclusion, mentioned in the proposal and again above, that the benefits of mandatory disaggregated collection are quite limited. A credit union trade

association explicitly opposed the alternative, asserting that its members would be unduly burdened by mandatory collection of disaggregated race and ethnicity information. Other commenters did not directly address this alternative, but several industry commenters supported the flexibility of the proposal with respect to collection of disaggregated race and ethnicity information, implicitly opposing making this collection mandatory.

As discussed above in Part V, the Bureau disagrees with the consumer advocacy group commenter that there would be little burden to Regulation B-only creditors from making the collection of disaggregated race and ethnicity categories mandatory. Even accepting the commenter's premise, however, the Bureau notes again that it believes the additional benefits of this alternative to be quite limited because, among other reasons, many Regulation B-only creditors are likely to eventually collect disaggregated race and ethnicity data through adoption of the 2016 URLA. Moreover, the commenter did not address the limited usefulness of disaggregated race and ethnicity data from lenders with a very low volume of loan originations. The Bureau continues to believe that the benefits of this alternative are very low. Accordingly, the Bureau is not making disaggregated race and ethnicity categories mandatory for compliance with Regulation B at this time.

The Bureau also considered eliminating entirely the requirement in Regulation B to collect and retain certain applicant information. This alternative would reduce burden to firms that do not report under HMDA. However, the Bureau believes it may impose costs on consumers. The prudential regulators confirm that data collected and retained by entities subject to Regulation B but not Regulation C may be used for fair lending supervision and enforcement. Institutions subject to Regulation B but not Regulation C include, for example, institutions that do not have a branch or home office in a Metropolitan Statistical Area (MSA), do not meet an applicable asset threshold, or do not meet an applicable loan volume threshold.

For instance, the 2015 NCUA Call Report and the 2015 Nationwide Mortgage Licensing System & Registry (NMLS) Mortgage Call Report data include 489 credit unions and 161 non-depository institutions that originated at least 25 closed-end mortgages that are not found in the 2015 HMDA data.<sup>44</sup> In

<sup>44</sup> The criteria for being a financial institution and reporting transactions under HMDA are different in

addition, many community banks in rural areas are already exempt from HMDA reporting because they do not have a branch or home office in an MSA.<sup>45</sup> Demographic information collected under Regulation B by those institutions with larger loan volumes may be used in statistical analysis that supports fair lending supervision and enforcement. Removing the Regulation B requirement altogether would make detection of any discrimination by these entities more difficult, with potentially large costs to consumers where such discrimination exists. Even for institutions with very small volumes of originations that may not be subject to HMDA reporting because they do not meet an applicable loan volume threshold, the retained information may be useful for comparative file reviews. In 2015, there were 1,178 institutions that reported HMDA data but had fewer than 25 originations and therefore would likely be exempt under the 2015 HMDA Final Rule if they continue to originate loans at a similar volume. Although the loan volumes of most of these institutions would be too sparse for statistical analysis, the ability to conduct comparative file reviews using data retained under Regulation B has some benefit.

A small financial institution commenter advocated for eliminating the Regulation B requirement to collect and retain race and ethnicity information. The commenter asserted the resulting data are never used by regulators, while the collection and retention imposes a substantial burden. A credit union trade association commenter also argued that the Bureau should remove the requirement, asserting that removing it would reduce the regulatory burden on its members.

The Bureau acknowledges that the collection and retention requirement of Regulation B imposes some burden on financial institutions. As noted above, the Bureau believes that consumers could suffer substantial harm if the requirement were removed. Although it may be true in the particular case of the community bank commenter, the Bureau believes it is not the case that

some ways from the criteria for reporting under the NMLS Mortgage Call Report and reporting transactions under it. It is possible that the NMLS omits some non-depository institutions that originated at least 25 closed-end mortgages, did not report HMDA data, and are subject to Regulation B. Some or all of these institutions may also not have been required to report HMDA data.

<sup>45</sup> The Bureau does not have an estimate of the number of rural community banks that are currently exempt from HMDA reporting and originate at least 25 loans per year. The FFIEC call report for banks does not report originations for depository institutions that do not report to HMDA.

these data are never used by regulators. Both the Bureau's consultations with the prudential regulators and its own experience in fair lending enforcement indicate that these data are used. Accordingly, the Bureau is not removing the Regulation B requirement to collect and retain race and ethnicity information.

#### Model Forms for Collecting Race and Ethnicity Data

The Bureau believes that the provision to change the model forms for collecting race and ethnicity data will have modest benefits to firms collecting these data, by providing updated model forms, and reducing confusion regarding the outdated 2004 URLA. The final rule does not impose any new costs on firms, nor does the Bureau believe that consumers will experience any cost or benefit from the provision. The Bureau requested comment regarding the costs and benefits associated with this provision. Industry commenters supported the change, with several confirming the potential benefits noted above.

#### Allowing Voluntary Collection of Applicant Information

Regarding the provision to allow certain creditors to voluntarily collect demographic information, the Bureau believes the financial institutions that will most likely exercise such options will be low-volume, low-complexity institutions that have made a one-time investment in HMDA collection and reporting and would like to utilize that collection process already in place. The Bureau believes the final rule will provide modest benefits to such institutions, by saving on one-time adjustment costs required to shift in and out of collection. The Bureau expects that institutions will only exercise this option if voluntary collection provides a net benefit. The Bureau does not believe that consumers will experience any costs or benefits from this provision except to the extent that financial institutions achieve cost savings and pass any such cost savings on to their customers.

The Bureau requested comment regarding the costs and benefits associated with this provision. The Bureau also requested data on the number of firms that might be interested in voluntary collection under this provision. No commenters provided such data.

#### *C. Impact on Depository Institutions and Credit Unions With \$10 Billion or Less in Assets, as Described in Dodd-Frank Section 1026*

The Bureau believes that depository institutions and credit unions with \$10 billion or less in assets will not be differentially affected by the substantive amendments. The primary benefit to lenders from the final rule is the reduced uncertainty and compliance burden from allowing the disaggregated race and ethnicity information collected under Regulation C to be used to comply with Regulation B. Both certain depository institutions and credit unions with less than \$10 billion in assets and covered persons with more than \$10 billion in assets currently report data under HMDA and thus will receive these benefits. The benefits may be somewhat larger for depository institutions and credit unions with less than \$10 billion in assets because the relative costs of duplicative collection will be greater for these entities.

#### *D. Impact on Access to Credit*

The Bureau does not believe that there will be an adverse impact on access to credit resulting from any of the provisions of the final rule.

#### *E. Impact on Consumers in Rural Areas*

The Bureau believes that rural areas might benefit from the provision to allow collection of disaggregated race and ethnicity information more than urban areas. One of the exceptions to the reporting requirements under HMDA is for entities that do not have a branch or home office located in an MSA. Such entities likely serve primarily customers in rural areas. To the extent that the provision benefits firms and consumers, consumers in rural areas will see the largest benefits.

### VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small business, small governmental units, and small nonprofit organizations. The RFA defines a "small business" as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not

have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.

On March 24, 2017, the Bureau issued the 2017 ECOA Proposal on its Web site. The Bureau concluded that the proposal, if adopted, would not have a significant economic impact on any small entities and that an IRFA was therefore not required. The Bureau requested comment on the analysis under the RFA and any relevant data. The Bureau did not receive any comments on the analysis or data.

This final rule adopts the proposed rule without making changes that would affect the Bureau's conclusion that the rule will not have a significant economic impact on any small entities. All methods of compliance under current law will remain available to covered persons, including small entities, when these provisions become effective. Thus, a small entity that is in compliance with current law need not take any additional action, save those already required by the 2015 HMDA Final Rule.

Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

### IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB)'s approval for information collection requirements prior to implementation. The collections of information related to Regulation B and Regulation C have been previously reviewed and approved by OMB and assigned OMB Control Number 3170-0013 (Regulation B) and 3170-0008 (Regulation C). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this final rule would not impose any new or revised information collection requirements (recordkeeping, reporting or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA. Although some entities subject to Regulation B but not Regulation C may choose to voluntarily

begin collecting disaggregated race and ethnicity information, the Bureau believes the most likely reason for this to occur is through adoption of the 2016 URLA, which is not part of the final rule.

#### List of Subjects in 12 CFR Part 1002

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Credit unions, Discrimination, Fair lending, Marital status discrimination, National banks, National origin discrimination, Penalties, Race discrimination, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination.

#### Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation B, 12 CFR part 1002, as set forth below:

#### PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 1002 continues to read as follows:

**Authority:** 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b.

■ 2. Amend § 1002.5 by adding paragraph (a)(4) to read as follows:

#### § 1002.5 Rules concerning requests for information.

(a) \* \* \*

(4) *Other permissible collection of information.* Notwithstanding paragraph (b) of this section, a creditor may collect information under the following circumstances provided that the creditor collects the information in compliance with appendix B to 12 CFR part 1003:

(i) A creditor that is a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for a closed-end mortgage loan that is an excluded transaction under 12 CFR 1003.3(c)(11) if it submits HMDA data concerning such closed-end mortgage loans and applications or if it submitted HMDA data concerning closed-end mortgage loans for any of the preceding five calendar years;

(ii) A creditor that is a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for an open-end line of credit that is an excluded transaction under 12 CFR 1003.3(c)(12) if it submits HMDA data concerning such open-end lines of credit and applications or if it submitted HMDA data concerning open-end lines of credit for any of the preceding five calendar years;

(iii) A creditor that submitted HMDA data for any of the preceding five

calendar years but is not currently a financial institution under 12 CFR 1003.2(g) may collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if not excluded by 12 CFR 1003.3(c)(11) or (12);

(iv) A creditor that exceeded an applicable loan volume threshold in the first year of the two-year threshold period provided in 12 CFR 1003.2(g), 1003.3(c)(11), or 1003.3(c)(12) may, in the second year, collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if the loan were not excluded by 12 CFR 1003.3(c)(11) or (12);

(v) A creditor that is a financial institution under 12 CFR 1003.2(g), or that submitted HMDA data for any of the preceding five calendar years but is not currently a financial institution under 12 CFR 1003.2(g), may collect information regarding the ethnicity, race, and sex of an applicant for a loan that would otherwise be a covered loan under 12 CFR 1003.2(e) if the loan were not excluded by 12 CFR 1003.3(c)(10).

(vi) A creditor that is collecting information regarding the ethnicity, race, and sex of an applicant or first co-applicant may collect information regarding the ethnicity, race, and sex of a second or additional co-applicant for a covered loan under 12 CFR 1003.2(e) or for a second or additional co-applicant for a loan described in paragraphs (a)(4)(i) through (v) of this section.

\* \* \* \* \*

■ 3. Amend § 1002.12 by revising paragraph (b)(1)(i) to read as follows:

#### § 1002.12 Record retention.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the Act and this part or other similar law, any information obtained pursuant to § 1002.5(a)(4), and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request.

\* \* \* \* \*

■ 4. Amend § 1002.13 by revising paragraph (a)(1)(i) and paragraph (b) to read as follows:

#### § 1002.13 Information for monitoring purposes.

(a) \* \* \*

(1) \* \* \*

(i) Ethnicity and race using either:

(A) For ethnicity, the aggregate categories Hispanic or Latino and not Hispanic or Latino; and, for race, the aggregate categories American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White; or

(B) The categories and subcategories for the collection of ethnicity and race set forth in appendix B to 12 CFR part 1003.

\* \* \* \* \*

(b) *Obtaining information.* Questions regarding ethnicity, race, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the ethnicity, race, and sex of the applicant(s) on the basis of visual observation or surname. When a creditor collects ethnicity and race information pursuant to § 1002.13(a)(1)(i)(B), the creditor must comply with any restrictions on the collection of an applicant's ethnicity or race on the basis of visual observation or surname set forth in appendix B to 12 CFR part 1003. If there is more than one co-applicant, a creditor is permitted, but is not required, to collect the information set forth in paragraph (a) of this section from a second or additional co-applicant.

\* \* \* \* \*

■ 5. Effective January 1, 2018, amend Appendix B to Part 1002 by revising paragraph 1 and adding a Data Collection Model Form to the end of the Appendix to read as follows:

#### Appendix B to Part 1002—Model Application Forms

1. This appendix contains five model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; the fourth in transactions involving community property or occurring in community property States; and the fifth in residential mortgage transactions which contains a model disclosure for use in complying with § 1002.13 for certain dwelling-related loans. This appendix also contains a data collection model form for collecting information concerning an applicant's ethnicity, race, and sex that

complies with the requirements of § 1002.13(a)(1)(i)(A) and (ii). Appendix B to 12 CFR part 1003 provides a data collection model form for collecting information

concerning an applicant's ethnicity, race, and sex that complies with the requirements of § 1002.13(a)(1)(i)(B) and (ii). All forms

contained in this appendix are models; their use by creditors is optional.

\* \* \* \* \*

#### DATA COLLECTION MODEL FORM INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. You may select one or more designation for "Race." The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. However, if you choose not to furnish the information and you have made this application in person, under federal regulations the lender is required to note ethnicity, race, and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please check below.

##### APPLICANT:

☐ I do not wish to furnish this information

##### Ethnicity

☐ Hispanic or Latino  
☐ Not Hispanic or Latino

##### Race

☐ American Indian or Alaska Native  
☐ Asian  
☐ Black or African American  
☐ Native Hawaiian or Other Pacific Islander  
☐ White

##### Sex

☐ Female  
☐ Male

##### CO-APPLICANT:

☐ I do not wish to furnish this information

##### Ethnicity

☐ Hispanic or Latino  
☐ Not Hispanic or Latino

##### Race

☐ American Indian or Alaska Native  
☐ Asian  
☐ Black or African American  
☐ Native Hawaiian or Other Pacific Islander  
☐ White

##### Sex

☐ Female  
☐ Male

■ 6. Effective January 1, 2022, amend Appendix B to Part 1002 by revising paragraph 1 and under paragraph 3 removing the form "Uniform Residential Loan Application".

The revision reads as follows:

#### Appendix B to Part 1002—Model Application Forms

1. This appendix contains four model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; and the fourth in transactions involving community property or occurring in community property States. This appendix also contains a data collection model form for collecting information concerning an applicant's ethnicity, race, and sex that complies with the requirements of § 1002.13(a)(1)(i)(A) and (ii). Appendix B to 12 CFR part 1003 provides a data collection model form for collecting information concerning an applicant's ethnicity, race, and sex that complies with the requirements of § 1002.13(a)(1)(i)(B) and (ii). All forms contained in this appendix are models; their use by creditors is optional.

\* \* \* \* \*

■ 7. Amend Supplement I to Part 1002:

■ a. Under Section 1002.5—Rules concerning requests for information:

■ i. *Paragraph 5(a)(2)* is revised.

■ ii. *Paragraph 5(a)(4)* is added.

■ b. Under Section 1002.12—Record retention, *Paragraph 12(b)* is revised.

■ c. Under Section 1002.13—Information for monitoring purposes:

■ i. *Paragraph 13(a)—Information to be requested* is revised.

■ ii. *Paragraph 13(b)—Obtaining of information* is revised.

■ iii. *Paragraph 13(c)—Disclosure to applicants* is revised.

■ d. Appendix B—Model Application Forms is removed.

The revisions and additions read as follows:

#### Supplement I to Part 1002—Official Interpretations

\* \* \* \* \*

#### Section 1002.5—Rules Concerning Requests for Information

##### 5(a) General rules.

\* \* \* \* \*

##### Paragraph 5(a)(2).

1. *Local laws.* Information that a creditor is allowed to collect pursuant to a "state" statute or regulation includes information required by a local statute, regulation, or ordinance.

2. *Information required by Regulation C.* Regulation C, 12 CFR part 1003, generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race, ethnicity, and sex of applicants for certain

dwelling-secured loans, including some types of loans not covered by § 1002.13.

3. *Collecting information on behalf of creditors.* Persons such as loan brokers and correspondents do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act or another Federal or state statute or regulation requiring data collection.

*Paragraph 5(a)(4).*

1. *Other permissible collection of information.* Information regarding ethnicity, race, and sex that is not required to be collected pursuant to Regulation C, 12 CFR part 1003, may nevertheless be collected under the circumstances set forth in § 1002.5(a)(4) without violating § 1002.5(b). The information must be retained pursuant to the requirements of § 1002.12.

\* \* \* \* \*

#### Section 1002.12—Record Retention

\* \* \* \* \*

##### 12(b) Preservation of records.

1. *Copies.* Copies of the original record include carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer. A creditor that uses a computerized or mechanized system

need not keep a paper copy of a document (for example, of an adverse action notice) if it can regenerate all pertinent information in a timely manner for examination or other purposes.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with § 1002.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to § 1002.13 or the creditor is collecting information pursuant to § 1002.5(a)(4), however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

\* \* \* \* \*

#### *Section 1002.13—Information for Monitoring Purposes*

##### *13(a) Information to be requested.*

1. *Natural person.* Section 1002.13 applies only to applications from natural persons.

2. *Principal residence.* The requirements of § 1002.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two-to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to § 1002.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to § 1002.13.

4. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of § 1002.13.

5. *Transactions not covered.* The information-collection requirements of this section apply to applications for credit primarily for the purchase or refinancing of a dwelling that is or will become the applicant's principal residence. Therefore, applications for credit secured by the applicant's

principal residence but made primarily for a purpose other than the purchase or refinancing of the principal residence (such as loans for home improvement and debt consolidation) are not subject to the information-collection requirements. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling.

6. *Refinancings.* A refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same borrower. A creditor that receives an application to refinance an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again but is not required to do so if it was obtained in the earlier transaction.

7. *Data collection under Regulation C.* For applications subject to § 1002.13(a)(1), a creditor that collects information about the ethnicity, race, and sex of an applicant in compliance with the requirements of appendix B to 12 CFR part 1003 is acting in compliance with § 1002.13 concerning the collection of an applicant's ethnicity, race, and sex information. *See also* comment 5(a)(2)–2.

8. *Application-by-application basis.* For applications subject to § 1002.13(a)(1), a creditor may choose on an application-by-application basis whether to collect aggregate information pursuant to § 1002.13(a)(1)(i)(A) or disaggregated information pursuant to § 1002.13(a)(1)(i)(B) about the ethnicity and race of the applicant.

##### *13(b) Obtaining of information.*

1. *Forms for collecting data.* A creditor may collect the information specified in § 1002.13(a) either on an application form or on a separate form referring to the application. Appendix B to this part provides for two alternative data collection model forms for use in complying with the requirements of § 1002.13(a)(1)(i) and (ii) to collect information concerning an applicant's ethnicity, race, and sex. When a creditor collects ethnicity and race information pursuant to § 1002.13(a)(1)(i)(A), the applicant must be offered the option to select more than one racial designation. When a creditor collects ethnicity and race information pursuant to § 1002.13(a)(1)(i)(B), the applicant must be offered the option to select more than one ethnicity designation and more than one racial designation.

2. *Written applications.* The regulation requires written applications for the types of credit covered by

§ 1002.13. A creditor can satisfy this requirement by recording on paper or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

##### *3. Telephone, mail applications.*

i. A creditor that accepts an application by telephone or mail must request the monitoring information.

ii. A creditor that accepts an application by mail need not make a special request for the monitoring information if the applicant has failed to provide it on the application form returned to the creditor.

iii. If it is not evident on the face of an application that it was received by mail, telephone, or via an electronic medium, the creditor should indicate on the form or other application record how the application was received.

##### *4. Video and other electronic-application processes.*

i. If a creditor takes an application through an electronic medium that allows the creditor to see the applicant, the creditor must treat the application as taken in person. The creditor must note the monitoring information on the basis of visual observation or surname, if the applicant chooses not to provide the information.

ii. If an applicant applies through an electronic medium without video capability, the creditor treats the application as if it were received by mail.

5. *Applications through loan-shopping services.* When a creditor receives an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C (12 CFR part 1003), which generally requires creditors to report, among other things, the sex and race of an applicant on brokered applications or applications received through a correspondent.

6. *Inadvertent notation.* If a creditor inadvertently obtains the monitoring information in a dwelling-related transaction not covered by § 1002.13, the creditor may process and retain the application without violating the regulation.

##### *13(c) Disclosure to applicants.*

1. *Procedures for providing disclosures.* The disclosure to an applicant regarding the monitoring information may be provided in writing. Appendix B provides data collection model forms for use in complying with § 1002.13 and that comply with § 1002.13(c). A creditor may devise its

own disclosure so long as it is substantially similar. The creditor need not orally request the monitoring information if it is requested in writing.

\* \* \* \* \*

Dated: September 8, 2017.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2017-20417 Filed 9-29-17; 8:45 am]

**BILLING CODE 4810-AM-P**

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

### 12 CFR Part 1101

[Docket No. FFIEC-2017-0003]

#### Description of Office, Procedures, and Public Information

**AGENCY:** Federal Financial Institutions Examination Council (FFIEC).

**ACTION:** Final rule.

**SUMMARY:** The Federal Financial Institutions Examination Council (FFIEC or Council) is adopting as a final rule the interim final rule published July 3, 2017. The interim final rule announced revisions and additions to the Council's information disclosure regulations under the Freedom of Information Act (FOIA Regulations). The interim final rule also replaced the interim final rule published on December 27, 2016. The revisions in the interim final rule implement recent statutory amendments to the FOIA that are mandated by the FOIA Improvement Act of 2016, as well as update the language of the Council's regulations to more closely mirror the language of the FOIA and to reflect the Council's current FOIA procedures.

**DATES:** Effective October 2, 2017.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith Dupre, Executive Secretary, Federal Financial Institutions Examination Council, via telephone: (703) 516-5590, or via email: [JDupre@FDIC.gov](mailto:JDupre@FDIC.gov).

**SUPPLEMENTARY INFORMATION:** The Council<sup>1</sup> is finalizing its interim rule (82 FR 30724 (July 3, 2017)), which revised its information disclosure regulations under the Freedom of Information Act<sup>2</sup> (FOIA Regulations). On June 30, 2016, the Freedom of Information Act (FOIA) was amended

by the FOIA Improvement Act of 2016<sup>3</sup> (FOIA Improvement Act). Among other things, section 3 of the FOIA Improvement Act required each Federal agency to revise its disclosure regulations and procedures for processing FOIA requests in order to conform to the substantive amendments made by section 2 of the FOIA Improvement Act by December 27, 2016. Accordingly, the Council implemented the required substantive and procedural changes necessary to comply with the FOIA Improvement Act's amendments through issuance of the interim final rule (81 FR 94937 (December 27, 2016)). In addition, the Council made certain changes to its FOIA Regulations to reflect revisions brought about by prior amendments to the FOIA that were incorporated into the Council's procedures and to make the FOIA process easier for the public to navigate. In drafting these amendments to the FOIA Regulations, the Council consulted the "Guidance for Agency FOIA Regulations" issued by the U.S. Department of Justice's Office for Information Policy. No comments were received in response to the interim final rule and it is being finalized without change.

#### Authority and Issuance

For the reasons set forth in the preamble, the Federal Financial Institutions Examination Council adopts as a final rule, without changes, the interim final rule amending 12 CFR 1101.4, which was published at 82 FR 30724 on July 3, 2017.

Dated: September 27, 2017.

Federal Financial Institutions Examinations Council.

**Judith E. Dupre,**

*Executive Secretary.*

[FR Doc. 2017-21050 Filed 9-29-17; 8:45 am]

**BILLING CODE 7535-01-P; 6714-01-P; 6210-01-P; 4810-33-P; 4810-AM-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2016-3697; Product Identifier 2015-NM-143-AD; Amendment 39-19062; AD 2017-20-05]

**RIN 2120-AA64**

#### Airworthiness Directives; The Boeing Company Airplanes

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

<sup>3</sup> Public Law 114-185, 130 Stat. 538 (June 30, 2016).

**ACTION:** Final rule.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 2011-01-15, which applied to certain The Boeing Company Model 757-200, -200CB, and -300 series airplanes. AD 2011-01-15 required repetitive inspections for cracking of the crown skin panel along the chem-milled step at certain stringers, and repair if necessary. This AD adds repetitive inspections for cracking in additional areas, and repair if necessary; removes airplanes from the applicability; adds an optional skin panel replacement, which terminates all inspections; adds an optional preventive modification, which terminates certain inspections; and reduces the compliance time for certain inspections. This AD was prompted by reports of the initiation of new fatigue cracking in the fuselage skin of the crown skin panel along locally thinned channels adjacent to the chem-milled steps. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 6, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 6, 2017.

**ADDRESSES:** For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740; telephone 562-797-1717; Internet <https://www.myboeingfleet.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. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-3697.

#### 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-2016-3697; 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 final rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200

<sup>1</sup> The members of the Council are the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the State Liaison Committee.

<sup>2</sup> 5 U.S.C. 552.

New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Eric Schrieber, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5348; fax: 562-627-5210; email: [eric.schrieber@faa.gov](mailto:eric.schrieber@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011-01-15, Amendment 39-16572 (76 FR 1351, January 10, 2011) (“AD 2011-01-15”). AD 2011-01-15 applied to certain The Boeing Company Model 757-200, -200CB, and -300 series airplanes. AD 2011-01-15 required repetitive inspections for cracking of the fuselage skin of the crown skin panel along the chem-milled step at stringers S-4L and S-4R, from station (STA) 297 through STA 439, and repair if necessary. AD 2011-01-15 also included terminating action for the repetitive inspections of the repaired areas only. AD 2011-01-15 resulted from reports of cracking in the fuselage skin of the crown skin panel. The NPRM published in the **Federal Register** on February 18, 2016 (81 FR 8157) (“The NPRM”). The NPRM was prompted by reports of the initiation of new fatigue cracking in the fuselage skin of the crown skin panel along locally thinned channels adjacent to the chem-milled steps. The NPRM proposed to add repetitive inspections for cracking in additional areas, and repair if necessary. The NPRM also proposed to remove airplanes from the applicability in AD 2011-01-15. The NPRM also proposed to add an optional skin panel replacement, which would terminate all inspections, and an optional preventive

modification, which would terminate certain inspections.

We issued a supplemental NPRM (SNPRM) that published in the **Federal Register** on May 5, 2017 (82 FR 21146). The SNPRM proposed to reduce the compliance time for certain inspections.

We are issuing this AD to correct the unsafe condition on these products.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the SNPRM and the FAA’s response to each comment.

**Supportive Comment**

United Airlines and Boeing concurred with the SNPRM.

**Request for Alternative Method of Compliance (AMOC)**

VT Mobile Aerospace Engineering (MAE) Inc. stated that the proposed AD (in the SNPRM) affects Model 757-200 airplanes that were modified using certain VT MAE supplemental type certificates (STCs). VT MAE noted that its design at certain inspection locations is not identical to that of the Boeing STC design at those locations. Therefore, VT MAE plans to issue new service information to address the unsafe condition, and plans to request approval of an AMOC from the FAA for use of the new service information.

FedEx stated that its airplanes have been modified in accordance with the VT MAE STC, and once this AMOC is approved to address this issue, FedEx will use it to comply with the requirements in the proposed AD (in the SNPRM).

We acknowledge the commenters’ remarks. Under the provisions of paragraph (n) of this AD, we will consider requests for approval of an

AMOC that addresses the VT MAE STCs, if appropriate data are submitted to substantiate that the method would provide an acceptable level of safety. We have made no change to this AD in this regard.

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

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

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

We reviewed Boeing Special Attention Service Bulletin 757-53-0097, Revision 3, dated December 2, 2016. This service information describes procedures for repetitive external sliding probe eddy current (EC) and external spot-probe-medium-frequency EC inspections for cracking of the crown skin panel, repair, a preventive modification, and replacement of the crown skin panel. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Costs of Compliance**

We estimate that this AD affects 652 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action                                                      | Labor cost                                                             | Parts cost           | Cost per product                  | Cost on U.S. operators                |
|-------------------------------------------------------------|------------------------------------------------------------------------|----------------------|-----------------------------------|---------------------------------------|
| Inspections (Zone 1) [Retained actions from AD 2011-01-15]. | 2 work-hours × \$85 per hour = \$170 per inspection cycle.             | \$0 .....            | \$170 per inspection cycle ....   | \$110,840 per inspection cycle.       |
| Inspections (Zones 2 and 3) [new action].                   | Up to 4 work-hours × \$85 per hour = Up to \$340 per inspection cycle. | \$0 .....            | Up to \$340 per inspection cycle. | Up to \$221,680 per inspection cycle. |
| Optional modification .....                                 | Up to 615 work-hours × \$85 per hour = Up to \$52,275.                 | Up to \$26,496 ..... | Up to \$78,771 .....              | Up to \$51,358,692.                   |

We have received no definitive data that enables us to provide a cost estimate for the on-condition actions or the optional replacement specified in this 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 have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD)

2011–01–15, Amendment 39–16572 (76 FR 1351, January 10, 2011), and adding the following new AD:

**2017–20–05 The Boeing Company:**  
Amendment 39–19062; Docket No. FAA–2016–3697; Product Identifier 2015–NM–143–AD.

#### (a) Effective Date

This AD is effective November 6, 2017.

#### (b) Affected ADs

This AD replaces AD 2011–01–15, Amendment 39–16572 (76 FR 1351, January 10, 2011) ("AD 2011–01–15").

#### (c) Applicability

(1) This AD applies to The Boeing Company Model 757–200 and –300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016.

(2) Installation of Supplemental Type Certificate (STC) ST01518SE ([http://rgl.faa.gov/Regulatory\\_and\\_Guidance\\_Library/rgSTC.nsf/0/38B606833BB-D98B386257FAA00602538?OpenDocument&Highlight=st01518se](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSTC.nsf/0/38B606833BB-D98B386257FAA00602538?OpenDocument&Highlight=st01518se)) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01518SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

#### (d) Subject

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

#### (e) Unsafe Condition

This AD was prompted by reports of the initiation of fatigue cracking in the fuselage skin of the crown skin panel along locally thinned channels adjacent to the chem-milled steps. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin of the crown skin panel, which could result in pressure venting and consequent rapid decompression of the airplane.

#### (f) Compliance

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

#### (g) Repetitive Inspections

Do the applicable inspections required by paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) For all airplanes: Within the compliance time specified in paragraph (h) of this AD, do the Zone 1 inspection specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD. Repeat the applicable Part 1 or Part 2 inspection thereafter at the applicable times specified in table 1 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016. Accomplishing the preventive modification specified in paragraph (k)(1) of this AD or the replacement specified in paragraph (k)(2) of this AD terminates the inspections required by this paragraph.

(i) Do an external sliding probe eddy current (EC) inspection for cracking of the crown skin panel in the applicable Zone 1 areas specified in, and in accordance with, Part 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016.

(ii) Do an external spot-probe-medium-frequency EC inspection for cracking of the crown skin panel in the applicable Zone 1 areas specified in, and in accordance with, Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016.

(2) For airplanes on which any crack is found during any inspection required by paragraph (g)(1) of this AD; or any repair is installed that covers any portion of the Zone 1 inspection area specified in Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016; or the optional Zone 1 preventive modification specified in paragraph (k)(1) of this AD is installed: At the applicable time specified in table 2 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016, except as required by paragraph (l)(1) of this AD: Do the Zone 2 inspection specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD. Repeat the applicable Part 4 or Part 5 inspection thereafter at the applicable times specified in table 2 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016. Accomplishing the replacement specified in paragraph (k)(2) of this AD terminates the inspections required by this paragraph.

(i) Do an external sliding probe EC inspection for cracking of the crown skin panel in the applicable Zone 2 areas specified in, and in accordance with, Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016.

(ii) Do an external spot-probe-medium-frequency EC inspection for cracking of the crown skin panel in the applicable Zone 2 areas specified in, and in accordance with, Part 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016.

(3) For airplanes on which any crack is found during any inspection required by paragraph (g)(1) of this AD; or any repair is installed that covers any portion of the Zone 1 inspection area specified in Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016; or the optional Zone 1 preventive modification specified in paragraph (k)(1) of this AD is installed: At the applicable time specified in table 3 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016, except as required by paragraph (l)(1) of this AD, do the Zone 3 inspection specified in paragraph (g)(3)(i) or (g)(3)(ii) of this AD. Repeat the applicable Part 6 or Part 7 inspection thereafter at the applicable times specified in table 3 of paragraph 1.E.,

“Compliance,” of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016. Accomplishing the replacement specified in paragraph (k)(2) of this AD terminates the inspections required by this paragraph.

(i) Do an external sliding probe EC inspection for cracking of the crown skin panel in the applicable Zone 3 areas specified in, and in accordance with, Part 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016.

(ii) Do an external spot-probe-medium-frequency EC inspection for cracking of the crown skin panel in the applicable Zone 3 areas specified in, and in accordance with, Part 7 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016.

#### **(h) Initial Compliance Time for Inspection Required by Paragraph (g)(1) of This AD**

Within the applicable compliance times specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, whichever occurs latest: Do the initial inspection required by paragraph (g)(1) of this AD.

(1) For all airplanes: Before the accumulation of 15,000 total flight cycles.

(2) For airplanes on which an external sliding probe EC inspection for Zone 1, as specified in Boeing Special Attention Service Bulletin 757–53–0097, has been done as of the effective date of this AD: Within 620 flight cycles after accomplishing the most recent external sliding probe EC inspection for Zone 1.

(3) For airplanes on which an external spot-probe-medium-frequency EC inspection for Zone 1, as specified in Boeing Special Attention Service Bulletin 757–53–0097, has been done as of the effective date of this AD: Within 200 flight cycles after accomplishing the most recent external spot-probe-medium-frequency EC inspection for Zone 1.

(4) For all airplanes: Within 200 flight cycles or 90 days after the effective date of this AD, whichever occurs first.

#### **(i) Post-Preventive Modification Supplemental Inspections**

For airplanes on which a preventive modification has been installed as specified in Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016: At the applicable time specified in table 4 of paragraph 1.E., “Compliance,” of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016; do eddy current and detailed inspections for cracking of the applicable areas of the fuselage skin of the doublers, triplers, and fillers of the preventive modification, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016. Repeat the inspection thereafter at the applicable times specified in table 4 of paragraph 1.E., “Compliance,” of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016.

#### **(j) Repair**

If any cracking is found during any inspection required by paragraph (g)(1), (g)(2), (g)(3), or (i) of this AD, repair before further flight using a method approved in accordance with the procedures specified in paragraph (n) of this AD. Doing the repair ends the repetitive inspections for the repaired area only.

#### **(k) Optional Terminating Actions**

(1) Accomplishing the preventive modification, including doing high frequency EC open-hole inspections for cracking in the existing fastener holes, in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016, except as required by paragraph (l)(2) of this AD, terminates the inspections required by paragraph (g)(1) of this AD, provided the preventive modification is done before further flight after accomplishing an inspection required by paragraph (g)(1) of this AD. If any cracking is found during any high frequency EC open-hole inspection, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(2) Replacing the crown skin panel between station (STA) 297 and STA 439, and stringers S–4L and S–4R, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016, or using a method approved in accordance with the procedures specified in paragraph (n) of this AD, terminates the inspections required by paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

#### **(l) Exceptions to Service Information Specifications and Preventive Modification**

(1) Where Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016, specifies a compliance time “after the Revision 2 date of this service bulletin,” or “after the Revision 3 date of this service bulletin,” this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

#### **(m) Credit for Previous Actions**

This paragraph provides credit for Zone 1 inspections required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 757–53–0097, dated November 22, 2010 (which was incorporated by reference in AD 2011–01–15); Boeing Special Attention Service Bulletin 757–53–0097, Revision 1, dated January 6, 2011; or Boeing Special Attention Service Bulletin 757–53–0097, Revision 2, dated July 28, 2015.

#### **(n) 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 (o)(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) AMOCs approved for AD 2011–01–15 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD; except, as of the effective date of this AD, AMOCs that extend the initial compliance times specified in AD 2011–01–15 are no longer approved for the compliance time extension, and the compliance times required by this AD must be complied with.

(5) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (n)(5)(i) and (n)(5)(ii) 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. 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.

#### **(o) Related Information**

(1) For more information about this AD, contact Eric Schrieber, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: [Eric.Schrieber@faa.gov](mailto:Eric.Schrieber@faa.gov).

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(3) and (p)(4) of this AD.

#### **(p) Material Incorporated by Reference**

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

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

(i) Boeing Special Attention Service Bulletin 757–53–0097, Revision 3, dated December 2, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet <https://www.myboeingfleet.com>.

(4) 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.

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

Issued in Renton, Washington, on September 14, 2017.

**Jeffrey E. Duven,**

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

[FR Doc. 2017–20689 Filed 9–29–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2017–0532; Product Identifier 2016–NM–203–AD; Amendment 39–19060; AD 2017–20–03]

**RIN 2120–AA64**

#### Airworthiness Directives; Dassault Aviation Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X airplanes. This AD was prompted by a review showing that inadequate clearance may exist between certain electrical wiring and nearby structures. This AD requires an inspection of certain electrical wiring bundles and feeders, modifications, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 6, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 6, 2017.

**ADDRESSES:** For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet <http://www.dassaultfalcon.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–2017–0532.

#### 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–2017–0532; 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Dassault Aviation Model FALCON 7X airplanes. The NPRM published in the **Federal Register** on June 12, 2017 (82 FR 26867) (“the NPRM”). The NPRM was prompted by a review showing that inadequate clearance may exist between certain electrical wiring and nearby structures. The NPRM proposed to require an inspection of certain electrical wiring bundles and feeders, modifications, and corrective actions if necessary. We are issuing this AD to detect and correct inadequate clearances between electrical wiring and nearby structures, which could lead to interference or contact with a structure and cause an electrical short circuit or fluid leakage. This could result in the

loss of several functions essential for safe flight.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0230, dated November 21, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Dassault Aviation Model FALCON 7X airplanes. The MCAI states:

A review of the wiring and tubing lay-out showed that there may be low clearance between electrical wiring and nearby structure. Although no in-service incident has been reported, the minimum clearances could deteriorate over time.

This condition, if not detected and corrected, could lead to interference or contact with structure, provoking an electrical short circuit or fluid leakage, possibly resulting in loss of several functions essential for safe flight.

To initially address this potential unsafe condition, [Dassault Aviation] DA developed some interim modifications (mod) addressing the risk of short circuit and fluid leakage, and EASA issued AD 2010–0029 (later revised) [which corresponds to FAA AD 2011–14–04, Amendment 39–16739 (76 FR 39256, July 6, 2011) (“AD 2011–14–04”)] to require embodiment of those modifications in-service.

Since EASA AD 2010–0029R1 was issued, DA developed another set of modifications, available for in-service application through Service Bulletin (SB) F7X–056, which are considered the final solutions for this unsafe condition.

For the reasons described above, this [EASA] AD requires a one-time [general visual] inspection [for worn or damaged wiring or connectors due to inadequate clearance between wiring and nearby structures] of the affected electrical wiring and, depending on findings, corrective action(s) and modification of the aeroplane.

Corrective actions include modifying the clamping and routing; adding new brackets, clamps, and cable protections; replacing damaged parts; and improving connections using lock wires. 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–2017–0532.

#### Comments

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

#### Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial

changes. We have determined that these minor changes:

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

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

Dassault Aviation has issued Service Bulletin 7X-056, Revision 1, dated July 20, 2016. This service information describes procedures for an inspection of certain electrical wiring (wiring bundles and feeders), corrective actions, and modification of the airplane. This service information is reasonably

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

#### Costs of Compliance

We estimate that this AD affects 51 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

#### ESTIMATED COSTS

| Action                             | Labor cost                                    | Parts cost | Cost per product | Cost on U.S. operators |
|------------------------------------|-----------------------------------------------|------------|------------------|------------------------|
| Inspection and modifications ..... | 31 work-hours × \$85 per hour = \$2,635 ..... | \$7,660    | \$10,295         | \$525,045              |

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States,

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

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

##### 2017-20-03 Dassault Aviation:

Amendment 39-19060; Docket No. FAA-2017-0532; Product Identifier 2016-NM-203-AD.

##### (a) Effective Date

This AD is effective November 6, 2017.

##### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, serial numbers (S/Ns) 2 through 215 inclusive.

#### (d) Subject

Air Transport Association (ATA) of America Code 20, Standard Practices Airframe—Electrical Wiring.

#### (e) Reason

This AD was prompted by a review showing that inadequate clearance may exist between certain electrical wiring and nearby structures. We are issuing this AD to detect and correct inadequate clearances between electrical wiring and nearby structures, which could lead to interference or contact with a structure and cause an electrical short circuit or fluid leakage. This could result in the loss of several functions essential for safe flight.

#### (f) Compliance

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

#### (g) Inspection, Modification, and Corrective Actions

Within 99 months or 4,100 flight cycles, whichever occurs first, since the date of issuance of the original airworthiness certificate or date of issuance of the original export certificate of airworthiness; or within 60 days after the effective date of this AD; whichever occurs later: Do a general visual inspection of the affected electrical wiring of the airplane for worn or damaged wiring or connectors due to inadequate clearance between wiring and nearby structures, accomplish all applicable corrective actions, and modify the airplane, in accordance with the Accomplishment Instructions of Dassault Service Bulletin 7X-056, Revision 1, dated July 20, 2016, as specified in table 1 to paragraph (g) of this AD. Do all applicable corrective actions before further flight. The "Dassault service bulletin 7X-056 section" identified in table 1 to paragraph (g) of this AD is not required for airplanes on which a corresponding Dassault modification has been embodied in production, as identified in the "Excluded" column in table 1 to paragraph (g) of this AD.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—APPLICABLE SECTIONS OF DASSAULT SERVICE BULLETIN 7X-056, REVISION 1, DATED JULY 20, 2016

| Dassault Service Bulletin 7X-056 section | Excluded                        |
|------------------------------------------|---------------------------------|
| 7X-056-1 .....                           | Post-mod M876.                  |
| 7X-056-2 .....                           | Post-mod M897.                  |
| 7X-056-3 .....                           | Post-mod M900.                  |
| 7X-056-4 .....                           | S/Ns 132 through 215 inclusive. |
| 7X-056-5 .....                           | Post-mod M954.                  |
| 7X-056-6 .....                           | Post-mod M980.                  |
| 7X-056-7 .....                           | Post-mod M1021.                 |
| 7X-056-8 .....                           | None.                           |

#### (h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Dassault Service Bulletin 7X-056, issued October 30, 2014.

#### (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 Dassault Aviation'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 2016-0230, dated November 21, 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-2017-0532.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 1601 Lind Avenue SW.,

Renton, WA 98057-3356; telephone 425-227-1137; fax 425-227-1149.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

#### (k) Material Incorporated by Reference

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

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

(i) Dassault Service Bulletin 7X-056, Revision 1, dated July 20, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201-440-6700; Internet <http://www.dassaultfalcon.com>.

(4) 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.

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

Issued in Renton, Washington, on September 18, 2017.

**Dionne Palermo,**

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

[FR Doc. 2017-20691 Filed 9-29-17; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2017-0518; Product Identifier 2016-NM-167-AD; Amendment 39-19064; AD 2017-20-07]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Bombardier, Inc., Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC-8-400 series airplanes. This AD was prompted by the failure of the fire control amplifier (FCA), which was likely caused by an electrical short in a

discharged squib for a fire extinguishing bottle. This AD requires replacing certain circuit breakers. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 6, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 6, 2017.

**ADDRESSES:** For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email [thd.qseries@aero.bombardier.com](mailto:thd.qseries@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. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0518.

#### **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-2017-0518; 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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

Assata Dessaline, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7301; fax 516-794-5531.

#### **SUPPLEMENTARY INFORMATION:**

#### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model DHC-8-400 series airplanes. The NPRM published in the **Federal Register** on June 2, 2017 (82 FR 25554) ("the NPRM"). The NPRM was prompted by the failure of the FCA, which was likely

caused by an electrical short in a discharged squib for a fire extinguishing bottle. The NPRM proposed to require replacing certain circuit breakers. We are issuing this AD to prevent failure of the FCA and subsequent discharge of fire extinguishing bottles and false fire indications, leaving the flight crew with reduced firefighting capability in the event of a fire.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2016-25, dated August 22, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Bombardier, Inc., Model DHC-8-400 series airplanes. The MCAI states:

An operator reported having a false SMOKE warning light for the Aft Baggage compartment, which caused the pilots to discharge the Aft Baggage compartment fire extinguishing bottles per Aircraft Flight Manual procedures. Subsequently, there were continuous engine and Auxiliary Power Unit (APU) fire warning lights, and the fire extinguishing bottles for both engines (forward and aft) and the APU were automatically discharged. Post event investigation of the Fire Control Amplifier (FCA) revealed a burnt 2600-P2 connector. The FCA was also found to have sustained significant thermal damage. In a separate event involving a different operator, several

fire extinguishing bottles discharged after an electrical short was introduced into the FCA by a shorted squib tester (external ground support equipment) during maintenance.

The FCA manufacturer has identified the most likely failure condition to be an electrical short at the discharged squib. The squib’s burst disk may have caused a short circuit of the bridgewires, which caused the FCA’s internal power wires to experience thermal damage, consequently powering other squibs and fire alarm lines and resulting in the uncommanded discharge of the fire extinguishing bottles and false fire indications.

Bombardier (BA) has issued service bulletin (SB) 84-26-16 to change two 7.5 amp circuit breakers to lower current rating 1 amp circuit breakers to prevent damage to squib discharge circuits and the inadvertent discharge of fire extinguishing bottles.

This [Canadian] AD mandates the incorporation of [Bombardier] SB 84-26-16 to prevent the inadvertent discharge of fire extinguishing bottles [leaving the flight crew with reduced firefighting capability in the event of a fire].

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-2017-0518.

Comments

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

ESTIMATED COSTS

| Action                                | Labor cost                                 | Parts cost | Cost per product | Cost on U.S. operators |
|---------------------------------------|--------------------------------------------|------------|------------------|------------------------|
| Replacement of circuit breakers ..... | 3 work-hours × \$85 per hour = \$255 ..... | \$0        | \$255            | \$13,515               |

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

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Bombardier, Inc., has issued Service Bulletin 84-26-16, Revision A, dated February 12, 2016. This service information describes procedures for locating and replacing certain 7.5-amp circuit breakers with 1-amp circuit breakers. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

We estimate that this AD affects 53 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

responsibilities among the various levels of government.

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

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2017–20–07 Bombardier, Inc.:** Amendment 39–19064; Docket No. FAA–2017–0518; Product Identifier 2016–NM–167–AD.

#### (a) Effective Date

This AD is effective November 6, 2017.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001, and 4003 through 4504 inclusive.

#### (d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

#### (e) Reason

This AD was prompted by the failure of the fire control amplifier (FCA), which was likely caused by an electrical short in a discharged squib for a fire extinguishing bottle. We are issuing this AD to prevent failure of the FCA and subsequent discharge of fire extinguishing bottles and false fire indications, leaving the flight crew with reduced firefighting capability in the event of a fire.

#### (f) Compliance

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

#### (g) Replacement of Affected Circuit Breakers

Within 6,000 flight hours or 3 years, whichever occurs first, after the effective date of this AD: Replace the 7.5-amp circuit breakers specified in Bombardier Service Bulletin 84–26–16, Revision A, dated February 12, 2016, with 1-amp circuit breakers having part number MS3320–1, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–26–16, Revision A, dated February 12, 2016.

#### (h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–26–16, dated August 14, 2015.

#### (i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

#### (j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2016–25, dated August 22, 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–2017–0518.

(2) For more information about this AD, contact Assata Dessaline, Aerospace Engineer, Avionics and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

#### (k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 84–26–16, Revision A, dated February 12, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); Internet <http://www.bombardier.com>.

(4) 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.

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

Issued in Renton, Washington, on September 20, 2017.

**Dionne Palermo,**

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

[FR Doc. 2017–20824 Filed 9–29–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2016–9522; Product Identifier 2016–NM–144–AD; Amendment 39–19065; AD 2017–20–08]

**RIN 2120–AA64**

#### Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 2009–17–01, which applied to certain Gulfstream Model G–IV, GIV–X, GV–SP airplanes and Model GV airplanes. AD 2009–17–01 required an inspection for sealant applied to the exterior of the auxiliary power unit (APU) enclosure (firewall), and a revision of the airplane flight manual (AFM), as applicable. This AD requires revising the AFM and revising the applicability to include additional airplanes. This AD was prompted by a report indicating that the type design sealant applied to the APU enclosure failed certain tests. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 6, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 6, 2017.

**ADDRESSES:** For service information identified in this final rule, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email [pubs@gulfstream.com](mailto:pubs@gulfstream.com); Internet <http://www.gulfstream.com/>

[product\\_support/technical\\_pubs/pubs/index.htm](#). 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-2016-9522.

### 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-2016-9522; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Ky Phan, Aerospace Engineer, Propulsion and Services Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5536; fax: 404-474-5606; email: [ky.phan@faa.gov](mailto:ky.phan@faa.gov).

### SUPPLEMENTARY INFORMATION:

#### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009-17-01, Amendment 39-15991 (74 FR 40061, August 11, 2009) (“AD 2009-17-01”). AD 2009-17-01 applied to certain Gulfstream Model G-IV, GIV-X, GV-SP airplanes, and Model GV airplanes. The NPRM published in the **Federal Register** on January 4, 2017 (82 FR 737) (“the NPRM”). The NPRM was prompted by a report indicating that the type design sealant (Aerospace Material Specification (AMS) 3374), applied to the APU enclosure, does not meet the requirement in 14 CFR 25.1191(b)(1) for a firewall to be fireproof, and failed a certification test and a company test. The NPRM proposed to require revising the AFM and revising the applicability to include additional airplanes. We are issuing this AD to provide the flight crew with operating procedures for airplanes that have AMS 3374 or Gulfstream Material Specification (GMS) 4107 sealant applied to the APU enclosure (firewall). Under certain

anomalous conditions such as an APU failure/APU compartment fire, AMS 3374 or GMS 4107 sealant could ignite the exterior surfaces of the APU enclosure, and result in propagation of an uncontained fire to other critical areas of the airplane.

### Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA’s response to each comment.

### Request To Withdraw the NPRM

Gulfstream requested that the NPRM be withdrawn. The commenter stated that the FAA’s findings and decisions in the proposed AD are not based on analysis of the commenter’s supporting data and accepted risk and safety assessment methodologies. The commenter asserted that its risk assessments, performed using the FAA’s Transport Airplane Risk Assessment Methodology (TARAM) Handbook, are within the allowable guidelines of the FAA’s TARAM Handbook.

We do not agree with the commenter’s request because this final rule is consistent with FAA policy and orders. The FAA’s TARAM is used to assess risk associated with a wide variety of potential safety issues. The FAA typically follows the defined risk guidelines contained in the TARAM Handbook for transport category airplanes. However, occasionally, other factors affect the decision on whether to issue an AD. FAA Order 8110.107A, “Monitor Safety/Analyze Data,” paragraph 2-10.e. states:

In rare situations the Aviation Safety Engineer or FAA management may, based on factors unrelated to the risk analysis, make recommendations not consistent with risk guidelines for ADs or other mandatory corrective actions. The decision to accept or reject these recommendations is made during the CARB [Corrective Action Review Board].

One such factor, unrelated to risk analysis, is whether the affected system provides an emergency or safety function. Examples of emergency/safety systems include seatbelts, life rafts, oxygen systems, and firewalls. Failure of emergency systems typically do not cause an accident, but can greatly increase the probability of fatalities in the event of an additional unrelated failure. TARAM analyses of emergency/safety systems typically indicate a low TARAM risk. This is due to the fact that the precipitating event is very rare, for example, high-g decelerations due to an accident, ditching, explosive decompression, and engine fire. Ultimately, the decision regarding

whether to mandate airworthiness action for a condition is the responsibility of the FAA’s CARB, which for this AD was comprised of representatives from the Atlanta ACO Branch, Transport Airplane Directorate, Atlanta MIDO Section, and the Aircraft Evaluation Group. The CARB unanimously concluded that factors other than the TARAM risk indicated the need to mandate corrective action for Gulfstream APU firewalls assembled using AMS 3374 sealant, in addition to the previously mandated requirements for Gulfstream APU firewalls assembled using GMS 4107 sealant.

Several 14 CFR part 25 regulations are intended to prevent the spread of a fire to other critical areas of an airplane in the event of an in-flight or ground fire; one of these regulations is 14 CFR 25.1191 (“Firewalls”). The 14 CFR part 25 regulations include requirements for (1) fire detection, (2) fire suppression, and (3) fire containment by a firewall. The AMS 3374 sealant, as applied to the Gulfstream APU firewall type designs that are the subject of this AD, has been shown by fire testing to result in backside (cold side) ignition of the firewall when exposed to a 2,000 degree Fahrenheit flame for 15 minutes, thus violating the 14 CFR part 25 requirement for the firewall to be fireproof (refer to FAA Advisory Circular (AC) 20-135, “Powerplant Installation and Propulsion System Component Fire Protection Test Methods, Standards and Criteria,” dated February 6, 1990 (“AC 20-135”), for firewall fire testing guidance.) Previous fire testing also confirmed that Gulfstream APU firewalls assembled with GMS 4107 exhibited backside ignition during those tests. The backside ignition of the Gulfstream APU firewalls *occurred in an area of the airplane that does not have fire detection or fire suppression*. This is a non-compliance with the requirements of 14 CFR 25.1191(b)(1) for firewalls to be fireproof. If an APU fire occurred in flight or on the ground on such a non-compliant airplane, it could result in backside ignition of the firewall, potentially resulting in propagation of an uncontained fire to other critical areas of the airplane. The area outside and adjacent to the Gulfstream APU firewall contains many airplane critical systems such as empennage structure, flight control components, fuel lines, and oil lines. The FAA finds that APU operations on the affected Gulfstream models without a firewall that is fireproof, as required by 14 CFR 25.1191, constitutes an unsafe condition. The FAA performed an

additional TARAM analysis, which indicated a higher risk than the results of the original Gulfstream TARAM analysis. However, we want to point out that neither TARAM analysis was the sole consideration for mandating corrective action. We have made no changes to this AD in this regard.

#### **Request for Separate AD Action for AMS 3374 Sealant**

Gulfstream requested that the FAA issue a separate rulemaking action to address the use of AMS 3374 sealant. The commenter deems it inaccurate to associate the GMS 4107 sealant unsafe condition with the application of the AMS 3374 sealant. Gulfstream also considers the corrective actions to be significantly different for the two types of sealants.

We disagree with the commenter's request. Many of the Gulfstream airplanes affected by this AD have both GMS 4107 and AMS 3374 sealants used in the fabrication of APU firewalls. The use of GMS 4107 and/or AMS 3374 sealants, per the Gulfstream type design for the APU firewalls that are the subject of this AD action, has resulted in backside ignition of the APU firewall in fire tests that were intended to demonstrate that the firewalls are fireproof. The corrective action for both types of sealants is identical, applying restrictions on APU operations. The corrective actions specified in the AD being superseded, AD 2009-17-01, did not address APU firewalls fabricated using AMS 3374 sealant. Subsequent fire testing has shown that AMS 3374 sealant, used as specified in the Gulfstream type design, does not comply with the regulations that require a firewall to be fireproof; therefore, AD 2009-17-01 must be superseded to include APU firewalls fabricated using AMS 3374 sealant. Future rulemaking to incorporate a solution proposed by Gulfstream might be considered when and if a proposed solution is made available to the FAA. We have made no changes to this AD in this regard.

#### **Request To Clarify Terminology**

Gulfstream requested that the FAA revise the NPRM by removing all of the statements that AMS 3374 sealant is flammable. The commenter stated that it is not accurate to make a general statement that AMS 3374 sealant is flammable because there are many applications where AMS 3374 sealants are compliant with applicable fireproof certification requirements.

We partially agree with the commenter's request. The FAA's certification requirement is that firewalls be fireproof, not that the

sealant be fireproof. The FAA does not have specific requirements for sealant, apart from the requirement that its use in the assembly of firewalls must result in a fireproof firewall assembly.

Also, the commenter's statement that there are many applications where AMS 3374 sealants are compliant with applicable fireproof certification requirements may be partially correct. There could be firewalls assembled using AMS 3374 sealants that do meet the applicable fireproof certification requirements. The issue addressed by this final rule is that Gulfstream's application of AMS 3374 sealant to the APU firewall assemblies affected by this rulemaking action is not compliant with the airworthiness requirement for the firewall to be fireproof. The AMS 3374 sealant does meet the requirements of an industry specification, the Society of Automotive Engineers (SAE) Standard AMS 3374. Compliance with an SAE standard is not equivalent to, and does not satisfy, compliance with the FAA certification requirement that firewalls be fireproof. AC 20-135 is used throughout the aviation industry as guidance material for how to show compliance with the FAA's requirement that firewalls be fireproof. Regarding the use of sealants, AC 20-135 provides the following guidance:

Outgassing. A characteristic of bonded construction firewall materials and seal materials is the outgassing of the volatile constituents of the bonding resins or seal materials. This can occur from either the hot or cool side surface of the specimens during the test. These gasses are, in most instances, highly flammable. Ignition occurring on the cool side is unacceptable in passing the fire test. . . . For these types of construction, no "cool side" ignition is allowed and verification is required.

There are many variables that determine if a given firewall configuration meets the airworthiness requirement to be fireproof. Sealants are known to outgas volatile constituents. In the case of the Gulfstream APU firewall type design, outgassed constituents of AMS 3374 sealant ignited on the backside during fire testing, and therefore, the firewall does not meet the definition of fireproof per AC 20-135. We have changed the wording in this final rule to specify that the type design sealant (AMS 3374), as applied in the Gulfstream APU firewall, does not meet the airworthiness requirement in 14 CFR 25.1191(b)(1), for a firewall to be fireproof.

We do not agree that AMS 3374 sealant is compliant with applicable fireproof certification requirements because the FAA does not certificate sealants; the FAA certificates that firewalls are fireproof. Therefore, we

have made no changes to this AD in this regard.

#### **Request To Revise the Estimated Costs of Compliance**

Gulfstream requested that the estimated costs of compliance in the NPRM be revised to include costs associated with an operator's inability to use the APU during normal operations, and the cost associated with a terminating action. The commenter noted that the estimated costs in the NPRM are associated with physically revising the AFM by inserting the applicable AFM supplement (AFMS). The commenter stated that the costs associated with a terminating action that would allow an operator to use its APU in flight is much more expensive, and depending on the number of airplanes that need to be retrofitted, the costs are likely to be tens of millions of dollars.

The FAA did not include any costs associated with an operator's inability to use the APU during normal operations because APU usage is not required by the FAA for the operation of any of the affected aircraft. This final rule does allow APU usage during certain emergencies.

We acknowledge that the costs associated with a terminating action, which would allow an operator to have use of its APU in flight, may be higher because the costs associated with retrofit of the airplane are likely to be higher than for implementing the change to the AFMS. This final rule only provides the costs associated with implementing the AFMS that restricts APU operations. There are no hardware or modification costs associated with this final rule.

We do not agree with the commenter's request to revise the estimated costs of compliance. The FAA uses a standard labor rate of \$85 per hour for evaluation of all airworthiness actions, regardless of who performs the corrective action. The only cost associated with this final rule is for revising the AFM by inserting the applicable AFMS. Therefore, we have made no changes to this final rule regarding this issue.

#### **Additional Change Made to This Final Rule**

The FAA no longer considers this final rule to be an "interim action" and reference to "interim action," which was included in the NPRM, has been omitted from this final rule. The FAA will accept the AFMS restrictions on APU operation as terminating action. If Gulfstream proposes design changes that would eliminate the APU firewall unsafe condition addressed by this AD,

the FAA might consider further rulemaking.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously, and minor editorial changes. We have determined that these minor changes:

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

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

Related Service Information Under 1 CFR Part 51

We reviewed the following Gulfstream AFMSs. The AFMSs provide

operating limitations on the use of the APU during certain ground and flight operations. These documents are distinct since they apply to different airplane models.

- Gulfstream GIV/G300/G400 AFM Supplement GIV–2016–01, dated July 27, 2016, to the Gulfstream GIV AFM, dated April 22, 1987; the Gulfstream G300 AFM, dated January 15, 2003; and the Gulfstream G400 AFM, dated November 18, 2002.
- Gulfstream G450/G350 AFM Supplement G450–2016–01, dated July 27, 2016, to the Gulfstream G450 AFM, dated August 12, 2004; and the Gulfstream G350 AFM, dated October 28, 2004.
- Gulfstream GV AFM Supplement GV–2016–01, dated July 27, 2016, to the Gulfstream GV AFM, dated April 11, 1997.
- Gulfstream G550/G500 AFM Supplement G550–2016–01, dated July 27, 2016, to the Gulfstream G550 AFM,

dated August 14, 2003; and the Gulfstream G500 AFM, dated December 5, 2003.

- Gulfstream GVI (G650) AFM Supplement G650–2016–01, dated July 27, 2016, to the Gulfstream GVI (G650) AFM, dated September 7, 2012.
- Gulfstream GVI (G650ER) AFM Supplement G650ER–2016–03, dated July 27, 2016, to the Gulfstream GVI (G650ER) AFM, dated October 2, 2014.

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

Costs of Compliance

We estimate that this AD affects 1,220 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action             | Labor cost                               | Parts cost | Cost per product | Cost on U.S. operators |
|--------------------|------------------------------------------|------------|------------------|------------------------|
| AFM revision ..... | 1 work-hour × \$85 per hour = \$85 ..... | \$0        | \$85             | \$103,700              |

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2009–17–01, Amendment 39–15991 (74 FR 40061, August 11, 2009), and adding the following new AD:

**2017–20–08 Gulfstream Aerospace Corporation:** Amendment 39–19065; Docket No. FAA–2016–9522; Product Identifier 2016–NM–144–AD.

(a) Effective Date

This AD is effective November 6, 2017.

(b) Affected ADs

This AD replaces AD 2009–17–01, Amendment 39–15991 (74 FR 40061, August 11, 2009) (“AD 2009–17–01”).

(c) Applicability

This AD applies to the Gulfstream Aerospace Corporation airplanes, certificated

in any category, identified in paragraphs (c)(1) through (c)(5) of this AD.

(1) Model G-IV airplanes, having serial numbers (S/Ns) 1000 and subsequent.

(2) Model GIV-X airplanes, having S/Ns 4001 and subsequent.

(3) Model GV airplanes, having S/Ns 501 and subsequent.

(4) Model GV-SP airplanes, having S/Ns 5001 and subsequent.

(5) Model GVI airplanes, having S/Ns 6001 and subsequent.

#### (d) Subject

Air Transport Association (ATA) of America Code 49, Airborne Auxiliary Power; and 53, Fuselage.

#### (e) Unsafe Condition

This AD was prompted by a report indicating that the type design sealant (Aerospace Material Specification (AMS) 3374), as applied to the auxiliary power unit (APU) enclosure (firewall), does not meet the requirement in 14 CFR 25.1191(b)(1) for a firewall to be fireproof, and failed a certification test and a company test. We are issuing this AD to provide the flight crew with operating procedures for airplanes that have AMS 3374 or Gulfstream Material Specification (GMS) 4107 sealant applied to the APU enclosure. Under certain anomalous conditions such as an APU failure/APU compartment fire, AMS 3374 or GMS 4107 sealant could ignite the exterior surfaces of the APU enclosure and result in propagation of an uncontained fire to other critical areas of the airplane.

#### (f) Compliance

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

#### (g) Airplane Flight Manual (AFM) Revision

Within 30 days after the effective date of this AD, revise the Limitations Section of the applicable Gulfstream AFM specified in paragraphs (h)(1) through (h)(6) of this AD to include the information in the applicable Gulfstream AFM supplement (AFMS) specified in paragraphs (h)(1) through (h)(6) of this AD. These AFMSs introduce operating limitations on the use of the APU during certain ground and flight operations. This AFM revision may be done by inserting a copy of the applicable AFMS into the applicable AFM specified in paragraphs (h)(1) through (h)(6) of this AD. When the AFMS has been included in the general revision of the AFM, the general revision may be inserted into the AFM, provided the relevant information in the general revision is identical to that in the applicable AFMS specified in paragraphs (h)(1) through (h)(6) of this AD.

#### (h) AFMSs

For the AFM revision required by paragraph (g) of this AD, insert the applicable AFMS into the applicable Gulfstream AFM identified in paragraphs (h)(1) through (h)(6) of this AD.

(1) Gulfstream GIV/G300/G400 AFM Supplement GIV-2016-01, dated July 27, 2016, to the Gulfstream GIV AFM, dated April 22, 1987; the Gulfstream G300 AFM,

dated January 15, 2003; and the Gulfstream G400 AFM, dated November 18, 2002.

(2) Gulfstream G450/G350 AFM Supplement G450-2016-01, dated July 27, 2016, to the Gulfstream G450 AFM, dated August 12, 2004; and the Gulfstream G350 AFM, dated October 28, 2004.

(3) Gulfstream GV AFM Supplement GV-2016-01, dated July 27, 2016, to the Gulfstream GV AFM, dated April 11, 1997.

(4) Gulfstream G550/G500 AFM Supplement G550-2016-01, dated July 27, 2016, to the Gulfstream G550 AFM, dated August 14, 2003; and the Gulfstream G500 AFM, dated December 5, 2003.

(5) Gulfstream GVI (G650) AFM Supplement G650-2016-01, dated July 27, 2016, to the Gulfstream GVI (G650) AFM, dated September 7, 2012.

(6) Gulfstream GVI (G650ER) AFM Supplement G650ER-2016-03, dated July 27, 2016, to the Gulfstream GVI (G650ER) AFM, dated October 2, 2014.

#### (i) Credit for Previous Actions

This paragraph provides credit for the action required by paragraph (g) of this AD, if that action was performed before the effective date of this AD using the applicable service information specified in paragraphs (i)(1) through (i)(4) of this AD. This service information was incorporated by reference in AD 2009-17-01.

(1) Gulfstream G-IV/G300/G400 AFM Supplement G-IV-2009-02, Revision 1, dated June 25, 2009, to the Gulfstream GIV AFM, the Gulfstream G300 AFM, and the Gulfstream G400 AFM.

(2) Gulfstream G450/G350 AFM Supplement G450-2009-03, Revision 1, dated June 25, 2009, to the Gulfstream G450 AFM and the Gulfstream G350 AFM.

(3) Gulfstream GV AFM Supplement GV-2009-03, Revision 1, dated June 25, 2009, to the Gulfstream GV AFM.

(4) Gulfstream G550/G500 AFM Supplement G550-2009-03, Revision 1, dated June 25, 2009, Gulfstream G550 AFM and the Gulfstream G500 AFM.

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

(1) The Manager, Atlanta 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.

(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) AMOCs approved previously for paragraph (h) of AD 2009-17-01 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

#### (k) Related Information

(1) For more information about this AD, contact Ky Phan, Aerospace Engineer, Propulsion and Services Section, FAA,

Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5536; fax: 404-474-5606; email: [ky.phan@faa.gov](mailto:ky.phan@faa.gov).

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (l)(4) of this AD.

#### (l) Material Incorporated by Reference

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

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

(i) Gulfstream GIV/G300/G400 Airplane Flight Manual (AFM) Supplement GIV-2016-01, dated July 27, 2016, to the Gulfstream GIV AFM, dated April 22, 1987; the Gulfstream G300 AFM, dated January 15, 2003; and the Gulfstream G400 AFM, dated November 18, 2002.

(ii) Gulfstream G450/G350 Airplane Flight Manual (AFM) Supplement G450-2016-01, dated July 27, 2016, to the Gulfstream G450 AFM, dated August 12, 2004; and the Gulfstream G350 AFM, dated October 28, 2004.

(iii) Gulfstream GV Airplane Flight Manual (AFM) Supplement GV-2016-01, dated July 27, 2016, to the Gulfstream GV AFM, dated April 11, 1997.

(iv) Gulfstream G550/G500 Airplane Flight Manual (AFM) Supplement G550-2016-01, dated July 27, 2016, to the Gulfstream G550 AFM, dated August 14, 2003; and the Gulfstream G500 AFM, dated December 5, 2003.

(v) Gulfstream GVI (G650) Airplane Flight Manual (AFM) Supplement G650-2016-01, dated July 27, 2016, to the Gulfstream GVI (G650) AFM, dated September 7, 2012.

(vi) Gulfstream GVI (G650ER) Airplane Flight Manual (AFM) Supplement G650ER-2016-03, dated July 27, 2016, to the Gulfstream GVI (G650ER) AFM, dated October 2, 2014.

(3) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402-2206; telephone 800-810-4853; fax 912-965-3520; email [pubs@gulfstream.com](mailto:pubs@gulfstream.com); Internet [http://www.gulfstream.com/product\\_support/technical\\_pubs/pubs/index.htm](http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm).

(4) 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.

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

Issued in Renton, Washington, on September 18, 2017.

**Dionne Palermo,**

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

[FR Doc. 2017-20831 Filed 9-29-17; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2017-0099; Product Identifier 2017-NE-02-AD; Amendment 39-19035; AD 2017-19-05]

RIN 2120-AA64

#### Airworthiness Directives; Siemens S.A.S. Smoke Detectors

##### Republication

**Editorial Note:** Rule document 2017-20425 was originally published on pages 44717 through 44720 in the issue of Tuesday, September 26, 2017. In that publication, on page 44719, in Figure 1, a number was omitted from the first entry under column "P/N". Also in that publication, on page 44720, in Figure 3, a number was omitted from the table heading. The corrected document is published here in its entirety.

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Siemens S.A.S. smoke detectors installed on various transport category airplanes. This AD requires inspection and replacement of the affected smoke detectors. This AD was prompted by a report that the affected smoke detectors failed an acceptance test. We are issuing this AD to correct the unsafe condition on these products.

**DATES:** This AD becomes effective October 31, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 31, 2017.

**ADDRESSES:** For service information identified in this final rule, contact Siemens, Aviation Customer Support, 697 Rue Fourny, 78530 Buc, France; phone: (33) 1 3084 6650; fax: (33) 1 3956 1364. You may view this service information at the FAA, Engine and Propeller Standards Branch, Policy and Innovation Division, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125. It is also available on the Internet at <http://www.regulations.gov> by searching

for and locating Docket No. FAA-2017-0099.

#### 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-2017-0099; 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 AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Erin Hulverson, Aerospace Engineer, FAA, Boston ACO Branch, Compliance and Airworthiness Division, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7655; fax: 781-238-7199; email: [erin.hulverson@faa.gov](mailto:erin.hulverson@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on April 20, 2017 (82 FR 18588). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During a maintenance operation, some smoke detectors P/N PMC1102-02 failed an acceptance test, due to a significant degraded optical sensitivity. Investigation results concluded that light-emitting diodes (LED) were abnormally degraded, affecting specific batches where changes occurred in the LED manufacturer production process. Further investigation has determined that the affected LED have been installed on smoke detectors manufactured between November 2010 and January 2013, and on certain repaired units.

This condition, if not corrected, will generate an abnormal ageing of the smoke detector, leading to a decrease of the light intensity capability, possibly resulting in failure to detect smoke and consequent risk of an on-board uncontrolled fire.

You may obtain further information by examining the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0099.

#### Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

#### Comment on Certifying Authority

The European Aviation Safety Agency (EASA) commented that the affected smoke detectors were approved by EASA rather than by France.

We agree. These smoke detectors were approved by EASA. We did not change this AD because this AD does not reference the certifying authority for these smoke detectors. The section commented on by EASA exists only in the "Determination and Requirements of This Proposed AD" section of the NPRM. We did not change this AD.

#### Request To Revise Applicability

Delta Air Lines (Delta) requested that we revise the Applicability section of this AD to remove the reference to the date range when certain affected smoke detectors were produced. Delta indicated that the NPRM may be interpreted as implying that there are more affected smoke detector serial numbers than those identified in paragraph 1/D/ of Siemens Service Information Letter (SIL) PMC-26-002, Revision No. 1, dated January 2016, and of SIL PMC-26-003, Revision No. 2, dated February, 2016. Delta commented that removing the date range from the Applicability section of this AD would clarify applicability for operators.

We agree. We find that providing the part numbers (P/Ns) and serial numbers (S/Ns) for the affected smoke detectors sufficiently identifies all affected detectors. We revised this AD by removing the reference to the production date range from the Applicability section of this AD.

#### Request To Revise Compliance Schedule

Delta requested that we revise paragraph (f)(2) in the compliance section of this AD to indicate that repaired units identified in Figure (1) to paragraph (c) of this AD should be replaced within 5 months after the effective date of this AD. Delta commented that the NPRM does not specify when these affected detectors are to be replaced.

We agree. We revised the compliance section of this AD to specify that smoke detectors identified in paragraph (c)(2) of this AD must be replaced within 5 months after the effective date of this AD.

#### Support for This AD

The Air Line Pilots Association, International, commented that it

supports the intent of this AD to correct the unsafe condition on the affected products.

### Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

### Related Service Information Under 1 CFR Part 51

Siemens has issued SIL No. PMC-26-002, Revision No. 1, dated January 2016 and SIL No. PMC-26-003, Revision No. 2, dated February 2016. SIL No. PMC 26-002 provides a list of S/Ns for affected smoke detectors, P/Ns PMC1102-02, PMC3100-00, and GMC1102-02, known to be installed on Airbus A330 passenger, A330 freighter, and A380 airplanes. SIL No. PMC 26-003 provides a list of S/Ns for affected smoke detectors, P/N PMC1102, known to be installed on Boeing B737-400

airplanes that have been converted via supplemental type certificate from a passenger to a freighter airplane. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

### Costs of Compliance

We estimate that this AD affects an unknown number of smoke detectors installed on, but not limited to, various aircraft of U.S. registry.

We estimate the following costs to comply with this AD:

### ESTIMATED COSTS

| Action            | Labor cost                                  | Parts cost | Cost per product |
|-------------------|---------------------------------------------|------------|------------------|
| Inspection .....  | 0.2 work-hours × \$85 per hour = \$17 ..... | \$0        | \$17             |
| Replacement ..... | 0.8 work-hours × \$85 per hour = \$68 ..... | 1,285      | 1,353            |

### Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

### Regulatory Findings

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

For the reasons discussed above, I certify this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2017-19-05 Siemens S.A.S.:** Amendment 39-19035; Docket No. FAA-2017-0099; Product Identifier 2017-NE-02-AD.

#### (a) Effective Date

This AD becomes effective October 31, 2017.

#### (b) Affected ADs

None.

#### (c) Applicability

(1) This AD applies to Siemens S.A.S. smoke detectors, part numbers (P/Ns) PMC1102-02, PMC3100-00, and GMC1102-02, with serial numbers (S/Ns) listed in paragraph 1/D/ of Siemens Service Information Letter (SIL) No. PMC-26-002, Revision No. 1, dated January 2016; or paragraph 1/D/ of Siemens SIL No. PMC-26-003, Revision No. 2, dated February 2016.

(2) This AD also applies to those smoke detectors with P/Ns and S/Ns listed in Figure 1 to paragraph (c) of this AD; installed on, but not limited to, any airplane, certificated in any category, listed in paragraphs (c)(2)(i) or (ii) of this AD.

FIGURE 1 TO PARAGRAPH (c) OF THIS AD—P/N AND S/NS OF REPAIRED SMOKE DETECTORS

| P/N             | S/N                                                                                                                                                                                                                              |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| PMC1102-02 .... | 2129, 2281, 2335, 2343, 2356, 2399, 2411, 2428, 2588, 2731, 2851, 2888, 3658, 3696, 3710, 3729, 3731, 5032, 5039, 5040, 5107, 5216, 5233, 50069, 50075, 50087, 50122, 50204, 50250, 50264, 50268, 50270, 50272, 50366 and 50386. |
| PMC3100-00 .... | 201, 208, 213, 227, 260, 268, 312, 528, 588, 592, 606, 652, 655, 660, 667, 50037, 50046, 50058, 50060, 50062, 50067, 50070, 50072 and 50090.                                                                                     |

(i) in production on Airbus A330, A330 freighter, and A380 airplanes;

(ii) in service by supplemental type certificate modification on:

(A) Airbus A319 and A320, and Bombardier CL-600-2B19 (Challenger 850), Boeing (formerly McDonnell Douglas) DC-9 series 80 airplanes; and

(B) Boeing 737-400 (BDSF), 767, and 747-8 airplanes.

#### (d) Subject

Joint Aircraft System Component (JASC) Code 2611, Smoke Detection.

#### (e) Reason

This AD was prompted by a report that the affected smoke detectors failed an acceptance test. We are issuing this AD to prevent failure of the smoke detector, on-board uncontrolled fire, and damage to the airplane.

#### (f) Compliance

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

(1) Within 30 days after the effective date of this AD, inspect each Siemens smoke detector, or review your maintenance records, to determine if an affected detector is installed.

(2) For smoke detectors identified in paragraph (c)(1) of this AD, replace the detectors within the compliance times specified in Figures 2, 3, and 4 to paragraph (f) of this AD.

FIGURE 2 TO PARAGRAPH (f) OF THIS AD—P/N PMC1102-02

[Cargo compartments]

| Manufacturing date (month/year) | Compliance time (after the effective date of this AD) |
|---------------------------------|-------------------------------------------------------|
| 122010 to 112011 inclusive.     | Within 5 months.                                      |
| 122011 to 012013 inclusive.     | Within 11 months.                                     |

FIGURE 3 TO PARAGRAPH (f) OF THIS AD—P/N PMC3100-00 DETECTORS

[Cargo compartments]

| Manufacturing date (month/year) | Compliance time (after the effective date of this AD) |
|---------------------------------|-------------------------------------------------------|
| 032011 to 012012 inclusive.     | Within 5 months.                                      |
| 022012 to 012013 inclusive.     | Within 11 months.                                     |

FIGURE 4 TO PARAGRAPH (f) OF THIS AD—P/N GMC1102-02

[Passenger cabin or any other location]

| Manufacturing date (month/year) | Compliance time (after the effective date of this AD) |
|---------------------------------|-------------------------------------------------------|
| 112010 to 022012 inclusive.     | Within 24 months.                                     |
| 032012 to 122012 inclusive.     | Within 36 months.                                     |

(3) For smoke detectors identified in paragraph (c)(2) of this AD, replace the detectors within 5 months after the effective date of this AD.

#### (g) Installation Prohibition

After the effective date of this AD, do not install on any airplane a smoke detector:

(1) With a manufacturing date and P/N listed in Figure 2 or 3 to paragraph (f) of this AD;

(2) listed in Figure 4 to paragraph (f) of this AD unless the detector is marked 'SIL PMC-26-002'.

#### (h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, FAA, Boston ACO Branch, Compliance and Airworthiness Division, 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 Boston ACO Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD.

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

#### (i) Related Information

(1) For more information about this AD, contact Erin Hulverson, Aerospace Engineer, FAA, Boston ACO Branch, Compliance and Airworthiness Division, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7655; fax: 781-238-7199; email: [erin.hulverson@faa.gov](mailto:erin.hulverson@faa.gov).

(2) Refer to MCAI European Aviation Safety Agency AD 2016-0024, dated January 26, 2016, for more information. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2017-0099.

#### (j) Material Incorporated by Reference

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

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

(i) Siemens Service Information Letter (SIL) No. PMC-26-002, Revision No. 1, dated January 2016.

(ii) Siemens SIL No. PMC-26-003, Revision No. 2, dated February 2016.

(3) For Siemens service information identified in this AD, contact Siemens, Aviation Customer Support, 697 Rue Fourny, 78530 Buc, France; phone: (33) 1 3084 6650; fax: (33) 1 3956 1364.

(4) You may view this service information at FAA, Engine and Propeller Standards Branch, Policy and Innovation Division, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

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

Issued in Burlington, Massachusetts, on September 20, 2017.

**Robert J. Ganley,**

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2017-20425 Filed: 9-25-2017; 8:45 am; Publication Date: 9-26-2017]

**Editorial Note:** Rule document 2017-20425 was originally published on pages 44717 through 44720 in the issue of Tuesday, September 26, 2017. In that publication, on page 44719, in Figure 1, a number was omitted from the first entry under column "P/N". Also in that publication, on page 44720, in Figure 3, a number was omitted from the table heading. The corrected document is published here in its entirety.

[FR Doc. R1-2017-20425 Filed 9-29-17; 8:45 am]

**BILLING CODE 1301-00-D**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2016–0398; Airspace  
Docket No. 17–ANE–2]

**Amendment of Class E Airspace;  
Windsor Locks, CT**

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Windsor Locks, CT, by removing the Notice to Airmen (NOTAM) part-time status at Bradley International Airport under Class E airspace designated as an extension to a Class C surface area. This change enhances the safety and management of instrument flight rules (IFR) operations at Bradley International Airport under these Class E airspace designations. This action also updates the geographic coordinates of the airport.

**DATES:** Effective 0901 UTC, December 7, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:****Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in

Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Bradley International Airport, Windsor Locks, CT, to support IFR operations under standard instrument approach procedures at the airport.

**History**

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (82 FR 27449, June 15, 2017) Docket No. FAA–2017–0398 to amend Class E surface area airspace, by removing the NOTAM part-time status of the Class E airspace designated as an extension to a Class C surface area. This change enhances the safety and management of IFR operations at the airport. This action also updates the geographic coordinates of the airport for Class E airspace designated as an extension to a Class C surface area, and for Class E airspace extending upward from 700 feet or more above the surface within a 10.9-mile radius of Bradley International Airport, to coincide with the FAAs aeronautical database.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6003, and 6005, respectively, of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**Availability and Summary of  
Documents for Incorporation by  
Reference**

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas,

air traffic service routes, and reporting points.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace designated as an extension to a Class C surface area, and Class E airspace extending upward from 700 feet or more above the surface at Bradley International Airport, Windsor Locks, CT. The NOTAM part-time status is removed from the Class E airspace area designated as an extension to a Class C surface area.

Class E airspace designations are published in Paragraphs 6003 and 6005, respectively, of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

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

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

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

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

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

*Paragraph 6003 Class E Airspace Designated as an Extension to a Class C Surface Area.*

\* \* \* \* \*

#### ANE CT E3 Windsor Locks, CT [Amended]

Bradley International Airport, CT  
(Lat. 41°56'21" N., long 72°41'00" W.)

That airspace extending upward from the surface within 3.2 miles each side of the 224 bearing from Bradley International Airport, extending from the 5-mile radius to 9.6 miles southwest of the Bradley International Airport.

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

\* \* \* \* \*

#### ANE CT E5 Windsor Locks, CT [Amended]

Bradley International Airport, CT  
(Lat. 41°56'21" N., long. 72°41'00" W.)

That airspace extending upward from 700 feet above the surface within a 10.9-mile radius of Bradley International Airport.

Issued in College Park, Georgia, on September 21, 2017.

**Ryan W. Almasy,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2017–20848 Filed 9–29–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2017–0289; Airspace Docket No. 17–AEA–4]

#### Amendment of Class E Airspace; Wellsboro, PA

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace extending upward from 700 feet or more above the surface at Wellsboro, PA, as the airspace surrounding Wellsboro Johnston Airport was inadvertently removed from the airspace description. This action enhances the safety and management of instrument flight rules (IFR) operations at the airport.

**DATES:** Effective 0901 UTC, December 7, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on-line at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (800) 647–8927, or (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–6364.

#### SUPPLEMENTARY INFORMATION:

#### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code.

Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace in the Wellsboro, PA area, for the continued safety and management of IFR operations at the airport.

#### History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (82 FR 25989, June 6, 2017) Docket No. FAA–2017–0289 proposing to add Wellsboro Johnston Airport, Wellsboro, PA, back into the airspace designation for Wellsboro, PA, in Class E airspace extending upward from 700 feet above the surface. The airspace was inadvertently removed from the Order. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

#### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

#### The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Wellsboro Johnston Airport, Wellsboro, PA, as this airspace was inadvertently removed from the airspace description in FAA Order 7499.11B. These changes are

necessary for continued safety and management of IFR operations at the airport.

### Regulatory Notices and Analyses

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

### Environmental Review

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

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

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

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

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

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

\* \* \* \* \*

#### AEA PA E5 Wellsboro, PA [Amended]

Nessmuk Helipad Point in Space Coordinates (Lat. 41°44'11" N., long. 77°18'11" W.) Wellsboro Johnston Airport, PA (Lat. 41°43'41" N., long. 77°23'44" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space for the SIAP serving the Nessmuk Helipad, and within an 8.2-mile radius of Wellsboro Johnston Airport.

Issued in College Park, Georgia, on September 22, 2017.

**Ryan W. Almasy,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2017–20957 Filed 9–29–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2016–9453; Airspace Docket No. 16–AEA–12]

#### Amendment of Class E Airspace; Hot Springs, VA

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace extending upward from 700 feet or more above the surface at Hot Springs, VA, by adding controlled airspace for Bath Community Hospital Heliport to the Ingalls Field Airport airspace designation. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the heliport. This action also updates the geographic coordinates of Ingalls Field Airport in the associated Class E airspace. This action enhances the safety and airspace management of instrument flight rules (IFR) operations at the airport.

**DATES:** Effective 0901 UTC, December 7, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on-line at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal

Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–6364.

### SUPPLEMENTARY INFORMATION:

#### Authority for This Rulemaking

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

#### History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (82 FR 26409, June 7, 2017) Docket No. FAA–2016–9453 proposing to amend Class E airspace extending upward from 700 feet above the surface at Hot Springs, VA, by adding controlled airspace for Bath Community Hospital Heliport to the Ingalls Field Airport airspace designation. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, the FAA found that the updated geographic coordinates of Ingalls Field Airport were incorrect in the NPRM. This action corrects that error.

Class E airspace designations are published in Paragraph 6002, and 6005,

respectively of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

#### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

#### The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface by adding controlled airspace within a 7-mile radius of Bath Community Hospital Heliport to the existing designation of Class E airspace at Ingalls Field Airport, Hot Springs, VA. This action accommodates new area navigation (RNAV) (GPS) standard instrument approach procedures at the heliport. Airspace reconfiguration is necessary for the safety and management of IFR operations at the heliport.

Also, the geographic coordinates for Ingalls Field Airport are corrected to read (Lat. 37°57'05" N., long. 79°50'02" W.), from (Lat. 37°57'09" N., long. 79°50'03" W.).

#### Regulatory Notices and Analyses

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

#### Environmental Review

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

#### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

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

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

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

##### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

*Paragraph 6002 Class E Surface Area Airspace.*

\* \* \* \* \*

##### AEA VA E2 Hot Springs, VA [Amended]

Ingalls Field Airport, VA  
(Lat. 37°57'05" N., long. 79°50'02" W.)

Within a 4-mile radius of Ingalls Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Chart Supplement.

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

\* \* \* \* \*

##### AEA VA E5 Hot Springs, VA [Amended]

Ingalls Field Airport, VA  
(Lat. 37°57'05" N., long. 79°50'02" W.)  
Bath Community Hospital Heliport, VA  
(Lat. 37°59'36" N., long. 79°49'55" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Ingalls Field Airport, and within a 7-mile radius of Bath Community Hospital Heliport.

Issued in College Park, Georgia, on September 21, 2017.

**Ryan W. Almasy,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2017–20841 Filed 9–29–17; 8:45 am]

**BILLING CODE 4910–13–P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2017–0277; Airspace Docket No. 17–ASO–9]

#### Establishment of Class E Airspace; Columbia, MS

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace extending upward from 700 feet above the surface at Marion General Hospital Heliport, Columbia, MS, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving Marion General Hospital Heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the heliport.

**DATES:** Effective 0901 UTC, December 7, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation

Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-6364.

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at Marion General Hospital Heliport, Columbia, MS, to support IFR operations under SIAPs at the heliport.

##### History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (82 FR 25988, June 6, 2017) Docket No. FAA-2017-0277 to establish Class E airspace extending upward from 700 feet above the surface at Marion General Hospital Heliport, Columbia, MS, due to the new RNAV (GPS) SIAPs developed for IFR operations at the heliport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

##### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

##### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Marion General Hospital Heliport, Columbia, MS. This action provides the controlled airspace required to support the new RNAV (GPS) SIAPs for IFR operations at the heliport.

##### Regulatory Notices and Analyses

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

##### Environmental Review

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

##### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

##### Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

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

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

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

##### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

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

\* \* \* \* \*

##### **ASO MS E5 Marion General, Columbia, MS [New]**

Marion General Hospital Heliport, MS (Lat. 31°15'17" N., long. 89°48'19" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Marion General Hospital Heliport.

Issued in College Park, Georgia, on September 22, 2017.

**Ryan W. Almasy,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2017-20956 Filed 9-29-17; 8:45 am]

**BILLING CODE 4910-13-P**

#### **DEPARTMENT OF TRANSPORTATION**

##### **Federal Aviation Administration**

##### **14 CFR Part 71**

[Docket No. FAA-2017-0230; Airspace Docket No. 17-ASO-8]

##### **Amendment of Class D and Class E Airspace; New Bern, NC**

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class D and Class E airspace at Coastal Carolina Regional Airport (formally Craven County Regional Airport), New Bern, NC. The Notice to Airmen (NOTAM) part-time status is removed from Class E airspace designated as an extension. Also, under Class E surface airspace, the segment using the New Bern VHF omnidirectional range/distance measuring equipment (VOR/DME) navigation aid used to describe the northeast and southwest extensions to the airport is removed. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. This action also updates the geographic coordinates of the airport, updates the airport's name, and makes an editorial change replacing Airport/Facility Directory with the term Chart Supplement in the legal descriptions of associated Class D and E airspace. Also,

the docket number for this rule is corrected to FAA–2017–0230.

**DATES:** Effective 0901 UTC, December 7, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and Class E airspace at Coastal Carolina Regional Airport, New Bern, NC, to support IFR operations under standard instrument approach procedures at the airport.

##### **History**

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (82 FR 24265, May 26,

2017) Docket No. FAA–2017–0230 to amend Class D airspace, Class E surface area airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet or more above the surface at Coastal Carolina Regional Airport (formerly Craven County Regional Airport), New Bern, NC.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

##### **Availability and Summary of Documents for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

##### **The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class D airspace, Class E surface area airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet or more above the surface at Coastal Carolina Regional Airport (formerly Craven County Regional Airport), New Bern, NC. The NOTAM part-time status is removed from the Class E airspace area designated as an extension to a Class D surface area.

Class E airspace extending upward from 700 feet above the surface is amended to within a 7-mile radius (from a 6.5-mile radius) of the airport. The New Bern VOR/DME is removed from the description under Class E surface airspace, as it is no longer needed to describe the boundaries of the airport.

For the associated Class D and E airspace areas, the geographic coordinates of the airport are adjusted to coincide with the FAA's aeronautical database, and the airport name is changed from Craven County Regional

Airport to Coastal Carolina Regional Airport.

Also, this action replaces the outdated term Airport/Facility Directory with the term Chart Supplement in the associated Class D and E airspace legal descriptions.

Subsequent to publication, the FAA discovered the docket number in the NPRM was incorrectly listed as FAA–2016–0230. This action corrects the docket number to FAA–2017–0230.

Class D and Class E airspace designations are published in Paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

##### **Regulatory Notices and Analyses**

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

##### **Environmental Review**

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

##### **Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

##### **Adoption of the Amendment**

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

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

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

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

## **§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

*Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

## **ASO NC D New Bern, NC [Amended]**

Coastal Carolina Regional Airport, NC  
(Lat. 35°04'22" N., long. 77°02'35" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of Coastal Carolina Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6002 Class E Surface Area Airspace.*

\* \* \* \* \*

## **ASO NC E2 New Bern, NC [Amended]**

Coastal Carolina Regional Airport, NC  
(Lat. 35°04'22" N., long. 77°02'35" W.)

Within a 4-mile radius of Coastal Carolina Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

\* \* \* \* \*

## **ASO NC E4 New Bern, NC [Amended]**

Coastal Carolina Regional Airport, NC  
(Lat. 35°04'22" N., long. 77°02'35" W.)  
New Bern VOR/DME  
(Lat. 35°04'23" N., long. 77°02'42" W.)

That airspace extending upward from the surface within 2.4 miles each side of the New Bern VOR/DME 038° and 210° radials, extending from the 4-mile radius to 7 miles northeast and southwest of the VOR/DME.

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

\* \* \* \* \*

## **ASO AL E5 New Bern, NC [Amended]**

Coastal Carolina Regional Airport, NC

(Lat. 35°04'22" N., long. 77°02'35" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Coastal Carolina Regional Airport.

Issued in College Park, Georgia, on September 21, 2017.

**Ryan W. Almasy,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2017–20845 Filed 9–29–17; 8:45 am]

**BILLING CODE 4910–13–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 71**

**[Docket No. FAA–2017–0177; Airspace Docket No. 17–ACE–4]**

#### **Amendment of Class E Airspace; Wellington, KS**

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace extending upward from 700 feet above the surface at Wellington Municipal Airport, Wellington, KS. Airspace reconfiguration is necessary due to the decommissioning of the Wellington non-directional radio beacon (NDB), and cancellation of the NDB approach, and enhances the safety and management of standard instrument approach procedures for instrument flight rules (IFR) operations at the airport.

**DATES:** Effective 0901 UTC, December 7, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>. FAA Order 7400.11, Airspace Designations and Reporting

Points, is published yearly and effective on September 15.

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

Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

#### **SUPPLEMENTARY INFORMATION:**

#### **Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace extending upward from 700 feet above the surface at Wellington Municipal Airport, Wellington, KS, to support standard instrument approach procedures for IFR operations at the airport.

#### **History**

On April 24, 2017, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (82 FR 18875) Docket No. FAA–2017–0177, to amend Class E airspace extending upward from 700 feet above the surface at Wellington Municipal Airport, Wellington, KS. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

#### **Availability and Summary of Documents for Incorporation by Reference**

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas,

air traffic service routes, and reporting points.

### The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface at Wellington Municipal Airport, Wellington, KS, within a 6.4-mile radius (reduced from 6.8 miles) of the airport.

Airspace reconfiguration is necessary due to the decommissioning and cancellation of the Wellington NDB and NDB approach, and enhances the safety and management of the standard instrument approach procedures for IFR operations at the airport.

### Regulatory Notices and Analyses

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

### Environmental Review

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

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

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

\* \* \* \* \*

### ACE KS E5 Wellington, KS [Amended]

Wellington Municipal Airport, KS  
(Lat. 37°19'25" N., long. 97°23'18" W.)

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

Issued in Fort Worth, Texas, on September 19, 2017.

**Walter Tweedy,**

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

[FR Doc. 2017–20850 Filed 9–29–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**Docket No. FAA–2017–0646; Airspace  
Docket No. 17–AGL–17**

### Establishment of Class E Airspace; Ellendale, ND

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Ellendale, ND. Controlled airspace is necessary to accommodate new special instrument approach procedures developed at Ellendale Municipal Airport, for the safety and management of instrument flight rules (IFR) operations at the airport.

**DATES:** Effective 0901 UTC, December 7, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

### FOR FURTHER INFORMATION CONTACT:

Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

### SUPPLEMENTARY INFORMATION:

#### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at Ellendale Municipal Airport, Ellendale, ND, to support new special IFR procedures at the airport.

### History

On August 1, 2017, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E Airspace at the Ellendale Municipal Airport, Ellendale, ND (82 FR 35714) FAA–2017–0646. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received in support of the proposal.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B dated August 3, 2017,

and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

#### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the ADDRESSES section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

#### The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Ellendale Municipal Airport, Ellendale, ND, to accommodate new special instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

#### Regulatory Notices and Analyses

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

#### Environmental Review

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

that warrant preparation of an environmental assessment.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of Amendment

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

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

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

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

#### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

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

\* \* \* \* \*

#### AGL ND E5 Ellendale, ND [New]

Ellendale Municipal Airport, ND  
(Lat. 46°00'59" N., long. 098°30'56" W.)

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

Issued in Fort Worth, TX, on September 20, 2017.

**Walter Tweedy,**

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

[FR Doc. 2017–20843 Filed 9–29–17; 8:45 am]

**BILLING CODE 4910–13–P**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 73

[Docket No. FAA–2016–7055; Airspace Docket No. 15–AWP–11]

#### Establishment of Restricted Area R–2306F; Yuma Proving Ground, AZ

#### Correction

In Rule document 2017–20590, appearing on pages 44721–44723 in the issue of Tuesday, September 26, 2017, make the following correction:

#### § 73.23 [Corrected]

1. On page 44723, column one, line 7, the longitude coordinate "114°26'3" W." should read "114°26'33" W."

2. On page 44723, column one, line 11, the longitude coordinate "114°26'9" W." should read "114°26'29" W."

[FR Doc. C1–2017–20590 Filed 9–29–17; 8:45 am]

**BILLING CODE 1301–00–D**

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 73

[Docket No. FAA–2016–9591; Airspace Docket No. 16–ASW–21]

#### Establishment of Temporary Restricted Area R–5602; Fort Sill, OK

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

**ACTION:** Temporary final rule.

**SUMMARY:** This action establishes temporary restricted area R–5602, over the Fort Sill, OK, R–5601 restricted area complex, to support the U.S. Army Maneuver & Fires Integration Experiment (MFI) 2018 scheduled for December 2017. MFI 2018 is planned to exercise hazardous laser operations conducting counter unmanned aircraft systems (UAS) activities. The temporary restricted area will be in effect from December 4 through December 15, 2017. **DATES:** Effective date 0901 UTC, December 4, 2017, through December 15, 2017.

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

#### SUPPLEMENTARY INFORMATION:

#### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as

it establishes temporary restricted airspace at Fort Sill, OK, enhancing safety and accommodating essential military training during the U.S. Army's MFIX 2018 exercise being held December 4 through 15, 2017.

### History

On February 23, 2017, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) (82 FR 11417), Docket No. FAA-2016-9591, to establish a temporary restricted area designated to support hazardous training activities conducted during MFIX 2018 within the Fort Sill, OK, special use airspace (SUA) complex. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

### The Rule

The FAA is amending 14 CFR part 73 to establish temporary restricted area R-5602 in support of MFIX 2018 during the period of December 4 through 15, 2017, to contain hazardous laser activities demonstrating counter UAS capabilities. To effectively segregate nonparticipant air traffic from the hazardous activities associated with MFIX 2018 at Fort Sill, OK, the R-5602 lateral boundaries overlie the R-5601A, R-5601B, and a portion of R-5601F restricted areas and extend approximately 8 nautical miles (NM) east beyond the R-5601A and R-5601F eastern boundaries. R-5602 extends upward from 40,000 feet mean sea level (MSL) to 60,000 feet MSL, is activated daily by a Notice to Airmen (NOTAM), and is in effect only during the period of December 4 through December 15, 2017. This rule adds "daily" to the "Time of designation" for clarity.

Since R-5602 is a temporary area, it will not be depicted on the Dallas-Ft. Worth Sectional Aeronautical Chart or the IFR Enroute High Altitude Chart, H-6. However, a notice and graphic depiction will be published on the FAA's SUA Web site at <http://www.faa.gov/sua> and in the Notices to Airmen Publication (NTAP) available online at [http://www.faa.gov/air\\_traffic/publications/notices/](http://www.faa.gov/air_traffic/publications/notices/).

### Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory

Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

The FAA has determined that this action of establishing a temporary restricted area R-5602 which partially overlays portions of the R-5601 restricted area complex at Fort Sill, OK, qualifies for FAA adoption in accordance with FAA Order 1050.1F, paragraphs 8-2 and 9-2, *Adoption of Other Agencies' National Environmental Policy Act Documents, and Written Re-evaluations*, and 7400.2L, paragraph 32-2-3. The purpose of temporarily creating and utilizing the temporary Restricted Area (RA) is to safely segregate private and commercial aircraft from above-the-horizon hazardous laser activities while supporting the U.S. Army MFIX 2018 planned for November 27 through December 15, 2017 (the proposed temporary RA R-5602 would be active from December 4 through 15, 2017). The FAA, after conducting an independent review and evaluation of the United States Army's August 2017 Final Supplemental Environmental Assessment for the Temporary Creation and Utilization of Restricted Area R-5602 at Fort Sill, Oklahoma, has determined that the Army's Supplemental EA and its supporting documentation adequately assesses and discloses the environmental impacts of the proposed action, including evaluation of the establishment of airspace for temporary restricted airspace area R-5602. Based on the evaluation for potential environmental impact in the above-mentioned EA, the FAA, as the Cooperating Agency, concluded that adoption of the EA for the Temporary Creation and Utilization of Restricted Area R-5602 is authorized in accordance with 40 CFR 1506.3, *Adoption*. Accordingly, FAA adopts the Army's Supplemental EA and takes full responsibility for the scope and content that address the FAA's airspace establishment action.

### List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

### PART 73—SPECIAL USE AIRSPACE

- 1. The authority citation for part 73 continues to read as follows:

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

### § 73.56 Oklahoma (Amended)

- 2. § 73.56 is amended as follows:

\* \* \* \* \*

### R-5602 Fort Sill, OK [Temporary]

**Boundaries.** Beginning at lat. 34°49'30" N., long. 98°08'43" W.; to lat. 34°36'36" N., long. 98°08'43" W.; to lat. 34°36'36" N., long. 98°17'01" W.; to lat. 34°38'15" N., long. 98°17'01" W.; to lat. 34°38'15" N., long. 98°37'57" W.; to lat. 34°40'54" N., long. 98°37'56" W.; to lat. 34°42'07" N., long. 98°37'20" W.; to lat. 34°43'21" N., long. 98°36'02" W.; to lat. 34°43'30" N., long. 98°35'40" W.; to lat. 34°45'03" N., long. 98°29'46" W.; to lat. 34°46'15" N., long. 98°25'01" W.; to lat. 34°47'00" N., long. 98°17'46" W.; to lat. 34°46'45" N., long. 98°17'01" W.; to lat. 34°49'30" N., long. 98°17'01" W.; to the point of beginning.

**Designated altitudes.** 40,000 feet MSL to 60,000 feet MSL.

**Time of designation.** December 4-15, 2017, daily, by NOTAM.

**Controlling agency.** FAA, Fort Worth ARTCC.

**Using agency.** U.S. Army, Commanding General, U.S. Army Fires Center of Excellence, Fort Sill, OK.

Issued in Washington, DC, on September 22, 2017.

**Rodger A. Dean, Jr.,**

*Manager, Airspace Policy Group.*

[FR Doc. 2017-20954 Filed 9-29-17; 8:45 am]

**BILLING CODE 4910-13-P**

### SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 227 and 230

[Release No. 33-10416]

### Regulation Crowdfunding and Regulation A Relief and Assistance for Victims of Hurricane Harvey, Hurricane Irma, and Hurricane Maria

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interim final temporary rule.

**SUMMARY:** We are adopting interim final temporary rules for issuers subject to

reporting obligations pursuant to Regulation Crowdfunding and Regulation A in order to address the needs of companies directly or indirectly affected by Hurricane Harvey, Hurricane Irma, or Hurricane Maria. The temporary rules extend the filing deadlines for specified reports and forms due pursuant to Regulation Crowdfunding and Regulation A for certain issuers.

**DATES:** These rules are effective from September 28, 2017, through November 22, 2017.

**FOR FURTHER INFORMATION CONTACT:** Zachary O. Fallon, Special Counsel, or Amy Reischauer, Special Counsel, Office of Small Business Policy, Division of Corporation Finance, at (202) 551-3460, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to Rule 202<sup>1</sup> of Regulation Crowdfunding<sup>2</sup> under the Securities Act of 1933 (the “Securities Act”)<sup>3</sup> and Rule 257<sup>4</sup> of Regulation A<sup>5</sup> under the Securities Act as interim final temporary rules.

## I. Introduction

In late August 2017, Hurricane Harvey caused catastrophic damage along the Texas and Louisiana coast, in early September 2017, Hurricane Irma caused catastrophic damage to the U.S. Virgin Islands, Puerto Rico and the Florida coast, and, in mid-September 2017, Hurricane Maria caused additional catastrophic damage to the U.S. Virgin Islands and Puerto Rico. The storms and subsequent flooding have displaced individuals and businesses and disrupted communications and transportation across the affected regions. We are adopting these interim final temporary rules to address the needs of companies directly or indirectly affected by Hurricane Harvey, Hurricane Irma, or Hurricane Maria or their respective aftermaths that are subject to reporting obligations pursuant to Regulation Crowdfunding or Regulation A.

Section 28 of the Securities Act provides that the Commission may, by rule or regulation, “conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation issued under this title, to the

extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”<sup>6</sup>

## II. Temporary Relief From Filing Requirements for Issuers Subject to the Reporting Obligations of Regulation Crowdfunding or Regulation A

The lack of communications, transportation, electricity, facilities, and available staff and professional advisors as a result of Hurricane Harvey, Hurricane Irma, and Hurricane Maria could hamper the efforts of companies with reporting obligations to meet their filing deadlines pursuant to Regulation Crowdfunding or Regulation A. At the same time, investors have an interest in the timely availability of required information about these companies. While the Commission believes that the temporary relief from filing requirements provided by the amendments to Rule 202 of Regulation Crowdfunding<sup>7</sup> and Rule 257 of Regulation A<sup>8</sup> is both necessary in the public interest and consistent with the protection of investors, we remind companies that are the subject of the relief provided in these interim final temporary rules to continue to evaluate their obligations to make materially accurate and complete disclosures in accordance with the anti-fraud provisions of the federal securities laws.

Accordingly, pursuant to Section 28 of the Securities Act, we are adopting interim final temporary rules providing that an issuer subject to the reporting requirements of either Regulation Crowdfunding or Regulation A is exempt from any requirement to file specified reports or forms with the Commission where the conditions below are satisfied:

(a) The issuer is not able to meet a filing deadline due to Hurricane Harvey, Hurricane Irma, or Hurricane Maria or their respective aftermaths;

(b)(i) For issuers affected by Hurricane Harvey, the issuer files with the Commission, on or before October 27, 2017, the report or form required to be filed pursuant to either Regulation Crowdfunding or Regulation A during the period from and including August 25, 2017 to and including October 26, 2017;

(ii) For issuers affected by Hurricane Irma, the issuer files with the Commission, on or before November 8, 2017, the report or form required to be

filed pursuant to either Regulation Crowdfunding or Regulation A during the period from and including September 6, 2017 to and including November 7, 2017; or

(ii) For issuers affected by Hurricane Maria, the issuer files with the Commission, on or before November 22, 2017, the report or form required to be filed pursuant to either Regulation Crowdfunding or Regulation A during the period from and including September 20, 2017 to and including November 21, 2017; and

(c) In any such report or form, the issuer discloses that it is relying on the interim final temporary rules and states the reasons why, in good faith, it could not file such report or form on a timely basis.

For Regulation Crowdfunding, the relief includes annual reports on Form C-AR, progress updates on Form C-U, and termination of reporting on Form C-TR. For Regulation A, the relief includes post-qualification amendments required at least every 12 months after the qualification date to include updated financial statements, annual reports on Form 1-K, semi-annual reports on Form 1-SA, special financial reports on Forms 1-K or 1-SA, current reports on Form 1-U, and exit reports on Form 1-Z.

## III. Economic Analysis

Regulation Crowdfunding and Regulation A permit offers and sales of securities without registration under the Securities Act, subject to certain limitations and conditions, including compliance with ongoing reporting requirements. Based on staff analysis, approximately 150 filers publicly filed Regulation A offering statements between June 19, 2015 (the effective date of the most recent Regulation A amendments<sup>9</sup>) and August 31, 2017 that have been qualified as of September 15, 2017. Approximately 418 issuers initiated Regulation Crowdfunding offerings with Form C filings between May 16, 2016 and August 31, 2017, excluding issuers that have withdrawn offerings.<sup>10</sup> Approximately 28 registered intermediaries, including registered funding portals and registered broker-dealers, have participated in Regulation Crowdfunding offerings with Form C filings between May 16, 2016 and August 31, 2017, which includes offerings that may have been

<sup>9</sup> SEC Rel. No. 33-9741 (Mar. 25, 2015) [80 FR 21806 (Apr. 20, 2015)].

<sup>10</sup> These figures overstate the number of issuers with obligations to file annual reports under Regulation Crowdfunding, because they do not exclude issuers that have failed to raise the target amount or have exited the reporting regime.

<sup>1</sup> 17 CFR 227.202.

<sup>2</sup> 17 CFR 227 *et seq.*

<sup>3</sup> 15 U.S.C. 77a *et seq.*

<sup>4</sup> 17 CFR 230.257.

<sup>5</sup> 17 CFR 230.251 through 230.263.

<sup>6</sup> 15 U.S.C. 77z-3.

<sup>7</sup> See Rule 202(c) of Regulation Crowdfunding. 17 CFR 227.202(c).

<sup>8</sup> See Rule 257(f) of Regulation A. 17 CFR 230.257(f).

subsequently terminated or failed to reach the target amount.

We lack the data to estimate the number of investors in Regulation A or Regulation Crowdfunding offerings that could be affected if issuers rely on the relief provided by the interim final temporary rules, because information on the number of investors is generally not required to be disclosed in periodic or current reports required under Regulation A or in periodic reports or progress updates required under Regulation Crowdfunding.<sup>11</sup>

We are mindful of the costs and benefits of the interim final temporary rules.<sup>12</sup> We believe the interim final temporary rules will benefit issuers that have an obligation to file specified reports with the Commission pursuant to either Regulation Crowdfunding or Regulation A and have been adversely affected by Hurricane Harvey, Hurricane Irma, or Hurricane Maria or their respective aftermaths by permitting them to take additional time to meet their reporting obligations. We expect the relief provided by the interim final temporary rules will benefit issuers that, absent the relief, would not be able to avail themselves of the exemption from registration under Regulation Crowdfunding or Regulation A because the timely filing of required reports is a condition to the exemptions. In the absence of this relief, issuers could incur prohibitively high costs in an attempt to meet filing deadlines given the lack of communications, transportation, electricity, facilities, and available staff and professional advisors.

The requirement for an issuer to disclose that it is relying on Rule 202(c) of Regulation Crowdfunding or Rule 257(f) of Regulation A and to state the reasons why, in good faith, it could not file a report or form on a timely basis may impose minimal additional costs on issuers availing themselves of this relief. However, we believe that these minimal costs are justified in light of the significant negative implications of not being able to rely on the exemption and the prohibitively high costs an issuer may incur in attempting to file in a timely manner.

We also acknowledge that there may be costs imposed on investors, intermediaries, and other market

participants due to delayed access to information about offerings conducted in reliance on Regulation A and Regulation Crowdfunding. Generally, reporting requirements strengthen investor protection and decrease the extent of information asymmetries between issuers and investors. Ongoing reporting provides investors with periodically updated information, allowing them to assess investment opportunities based on the information provided and their level of risk tolerance, resulting in better informed investment decisions and improved allocative efficiency. Given that the interim final temporary rules allow for delayed reporting for a limited time period and only under specified conditions, we do not believe such costs will be significant.

The interim final temporary rules will not substantially affect competition or capital formation. We acknowledge the possibility that the interim final temporary rules may have a minor impact on efficiency. On the one hand, as noted above, the delay in reporting could marginally affect allocative efficiency to the extent that it allows information asymmetries between investors and issuers to persist for the length of time of the delay. On the other hand, we expect efficiency gains to the extent that the interim final temporary rules allow issuers to continue to rely on either of the exemptions from registration that would not be available if one of the required reports that is a condition to the exemptions was not filed in a timely manner, or to the extent the issuers are able to avoid paying a premium to service providers in an attempt to file in a timely manner by delaying reporting during the specified relief period.

As an alternative to the relief specified in the interim final temporary rules, we could have considered a longer or shorter relief period. While a shorter period would have reduced the costs to investors of asymmetric information, it would also reduce the benefits of the interim final temporary rules to issuers. Similarly, a longer period would increase the costs to investors. We believe that the approximately nine-week delay in the interim final temporary rules is appropriate given the potential impact Hurricane Harvey, Hurricane Irma, or Hurricane Maria or their respective aftermaths could have on the efforts of companies to meet filing deadlines pursuant to Regulation Crowdfunding and Regulation A.

#### IV. Procedural and Other Matters

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a rulemaking in the **Federal Register** and provide an opportunity for public comment. This requirement does not apply, however, if the agency “for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.”<sup>13</sup> The APA also generally requires that an agency publish an adopted rule in the **Federal Register** at least 30 days before it becomes effective. This requirement does not apply, however, if the agency finds good cause for making the rule effective sooner.<sup>14</sup>

Given the temporary nature of the relief contemplated by the interim final temporary rules and the significant and immediate impacts of Hurricane Harvey, Hurricane Irma, and Hurricane Maria and their aftermaths on issuers in affected areas, as discussed above, the Commission finds that good cause exists to dispense with notice and comment as impracticable and unnecessary, and to act immediately to amend Rule 202 of Regulation Crowdfunding and Rule 257 of Regulation A.<sup>15</sup> Further, the interim final temporary rules will not affect the burden or cost estimates associated with existing collections of information under Regulation Crowdfunding and Regulation A for purposes of the Paperwork Reduction Act of 1995.<sup>16</sup>

#### V. Statutory Basis and Text of Amendments

We are adopting amendments to Rule 202 of Regulation Crowdfunding and Rule 257 of Regulation A under the authority set forth in the Securities Act (15 U.S.C. 77a *et seq.*), particularly, Section 28 thereof.

#### List of Subjects

##### 17 CFR Part 227

Crowdfunding, Funding portals, Intermediaries, Reporting and recordkeeping requirements, Securities.

<sup>13</sup> 5 U.S.C. 553(b)(3)(B).

<sup>14</sup> 5 U.S.C. 553(d)(3).

<sup>15</sup> This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the interim final temporary rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines). The interim final temporary rules also do not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment).

<sup>16</sup> 44 U.S.C. 3501 *et seq.*

<sup>11</sup> Regulation A issuers that file Form 1-Z to suspend reporting are required to disclose the number of shareholders of record.

<sup>12</sup> Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

## 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

# **PART 227—REGULATION CROWDFUNDING, GENERAL RULES AND REGULATIONS**

- 1. The authority citation for part 227 is revised to read as follows:

**Authority:** 15 U.S.C. 77d, 77d–1, 77s, 77z–3, 78c, 78o, 78q, 78w, 78mm, and Pub. L. 112–106, secs. 301–305, 126 Stat. 306 (2012).

- 2. Amend § 227.202 by adding paragraph (c) to read as follows:

## **§ 227.202 Ongoing reporting requirements.**

\* \* \* \* \*

(c) *Temporary relief from certain reporting requirements.* (1) An issuer that is not able to meet a filing deadline for any report or form required to be filed by this section (Rule 202), Rule 203(a)(3) (§ 227.203(a)(3)), or Rule 203(b) (§ 227.203(b)), as applicable:

(i) During the period from and including August 25, 2017 to and including October 26, 2017 due to Hurricane Harvey and its aftermath shall be deemed to have satisfied the filing deadline for such report or form if the issuer files such report or form with the Commission on or before October 27, 2017;

(ii) During the period from and including September 6, 2017 to and including November 7, 2017 due to Hurricane Irma and its aftermath shall be deemed to have satisfied the filing deadline for such report or form if the issuer files such report or form with the Commission on or before November 8, 2017; or

(iii) During the period from and including September 20, 2017 to and including November 21, 2017 due to Hurricane Maria and its aftermath shall be deemed to have satisfied the filing deadline for such report or form if the issuer files such report or form with the Commission on or before November 22, 2017.

(2) In any report or form filed pursuant to paragraph (c)(1) of this section, the issuer must disclose that it is relying on this paragraph (c) (Rule 202(c) of Regulation Crowdfunding) and state the reasons why, in good faith, it could not file such report or form on a timely basis.

# **PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

- 3. The authority citation for part 230 continues to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78ll(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

\* \* \* \* \*

- 4. Amend § 230.257 by adding paragraph (f) to read as follows:

## **§ 230.257 Periodic and current reporting; exit report.**

\* \* \* \* \*

(f) *Temporary relief from ongoing reporting requirements.* (1) An issuer that is not able to meet a filing deadline for any report or form required to be filed by Rule 252(f)(2)(i) (§ 230.252(f)(2)(i)) or this section (Rule 257), as applicable:

(i) During the period from and including August 25, 2017 to and including October 26, 2017 due to Hurricane Harvey and its aftermath shall be deemed to have satisfied the filing deadline for such report or form if the issuer files such report or form with the Commission on or before October 27, 2017;

(ii) During the period from and including September 6, 2017 to and including November 7, 2017 due to Hurricane Irma and its aftermath shall be deemed to have satisfied the filing deadline for such report or form if the issuer files such report or form with the Commission on or before November 8, 2017; or

(iii) During the period from and including September 20, 2017 to and including November 21, 2017 due to Hurricane Maria and its aftermath shall be deemed to have satisfied the filing deadline for such report or form if the issuer files such report or form with the Commission on or before November 22, 2017.

(2) In any report or form filed pursuant to paragraph (f)(1) of this section, the issuer must disclose that it is relying on this paragraph (f) (Rule 257(f) of Regulation A) and state the reasons why, in good faith, it could not file such report or form on a timely basis.

By the Commission.

Dated: September 27, 2017.

**Brent J. Fields,**  
Secretary.

[FR Doc. 2017–21094 Filed 9–28–17; 4:15 pm]

**BILLING CODE 8011–01–P**

# **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

## **Food and Drug Administration**

### **21 CFR Part 876**

[Docket No. FDA–2017–N–5153]

## **Medical Devices; Gastroenterology-Urology Devices; Classification of the High Intensity Ultrasound System for Prostate Tissue Ablation**

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

**ACTION:** Final order.

**SUMMARY:** The Food and Drug Administration (FDA or we) is classifying the high intensity ultrasound system for prostate tissue ablation into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the high intensity ultrasound system for prostate tissue ablation's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

**DATES:** This order is effective October 2, 2017. The classification was applicable on October 9, 2015.

**FOR FURTHER INFORMATION CONTACT:** John Baxley, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G210, Silver Spring, MD 20993–0002, 301–796–6549, [john.baxley@fda.hhs.gov](mailto:john.baxley@fda.hhs.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

Upon request, FDA has classified the high intensity ultrasound system for prostate tissue ablation as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains

within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act to a predicate device that does not require premarket approval (see 21 U.S.C. 360c(i)). We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act and part 807 (21 U.S.C. 360(k) and 21 CFR part 807, respectively).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying

the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA shall classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients’ access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining “substantial equivalence”). Instead, sponsors can use the less burdensome 510(k) process, when necessary, to market their device.

## II. De Novo Classification

On March 23, 2015, SonaCare Medical, LLC submitted a request for De Novo classification of the Sonablate® 450. FDA reviewed the request in order to classify the device

under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on October 9, 2015, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 876.4340. We have named the generic type of device high intensity ultrasound system for prostate tissue ablation, and it is identified as a prescription device that transmits high intensity therapeutic ultrasound energy into the prostate to thermally ablate a defined, targeted volume of tissue, performed under imaging guidance. This classification does not include devices that are intended for the treatment of any specific prostate disease and does not include devices that are intended to ablate non-prostatic tissues/organs.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—HIGH INTENSITY ULTRASOUND SYSTEM FOR PROSTATE TISSUE ABLATION RISKS AND MITIGATION MEASURES

| Identified risks                                                                                                                                                                                                                                                                                                                                             | Mitigation measures                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Thermal injury from high intensity ultrasound exposure to non-target tissue: <ul style="list-style-type: none"> <li>• Erectile dysfunction</li> <li>• Urinary incontinence</li> <li>• Rectal fistula</li> <li>• Osteomyelitis pubis</li> </ul>                                                                                                               | Non-clinical performance testing; Software verification, validation, and hazard analysis; <i>In vivo</i> testing; Clinical testing; Labeling; and Physician training. |
| Thermal injury from high intensity ultrasound exposure to target tissue: <ul style="list-style-type: none"> <li>• Urethral stricture</li> <li>• Bladder neck contracture</li> <li>• Urinary retention</li> <li>• Tissue debris/obstruction</li> <li>• Voiding dysfunction</li> <li>• Dysuria</li> <li>• Hematuria</li> <li>• Ejaculation disorder</li> </ul> | Clinical testing, Labeling, and Physician training.                                                                                                                   |
| Mechanical injury from unintentional movement of ultrasound components: <ul style="list-style-type: none"> <li>• Patient rectal injury</li> <li>• Operator hand injury</li> </ul>                                                                                                                                                                            | Software verification, validation, and hazard analysis; Clinical testing; Labeling; and Physician training.                                                           |

TABLE 1—HIGH INTENSITY ULTRASOUND SYSTEM FOR PROSTATE TISSUE ABLATION RISKS AND MITIGATION MEASURES—Continued

| Identified risks                                    | Mitigation measures                                                                     |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------|
| Infection .....                                     | Sterilization validation, Reprocessing validation, Shelf life validation, and Labeling. |
| Electrical shock/electromagnetic interference ..... | Electrical safety testing, Electromagnetic compatibility testing, and Labeling.         |
| Adverse tissue reaction .....                       | Biocompatibility testing.                                                               |

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k).

At the time of classification, high intensity ultrasound systems for prostate tissue ablation are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

### III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) 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.

### IV. Paperwork Reduction Act of 1995

This final administrative order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in part 801, regarding labeling, have been approved under OMB control number 0910–0485.

### List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

#### PART 876—GASTROENTEROLOGY—UROLOGY DEVICES

■ 1. The authority citation for part 876 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 876.4340 to subpart E to read as follows:

#### § 876.4340 High intensity ultrasound system for prostate tissue ablation.

(a) *Identification.* A high intensity ultrasound system for prostate tissue ablation is a prescription device that transmits high intensity therapeutic ultrasound energy into the prostate to thermally ablate a defined, targeted volume of tissue, performed under imaging guidance. This classification does not include devices that are intended for the treatment of any specific prostate disease and does not include devices that are intended to ablate non-prostatic tissues/organs.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Non-clinical performance data must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

- (i) Characterization of acoustic pressure and power output at clinically relevant levels;
- (ii) Measurement of targeting accuracy and reproducibility of high intensity ultrasound output;
- (iii) Ultrasound-induced heating verification testing at target and non-target tissues;
- (iv) Electrical safety testing; and
- (v) Electromagnetic compatibility testing.

(2) Software verification, validation, and hazard analysis must be performed.

(3) The elements of the device that may contact the patient's mucosal tissue must be demonstrated to be biocompatible.

(4) Performance data must demonstrate the sterility of the device components that contact the patient's mucosal tissue.

(5) Performance data must support shelf life by demonstrating continued sterility of the device or the sterile components, package integrity, and device functionality over the identified shelf life.

(6) Performance data must support the instructions for reprocessing all reusable components.

(7) *In vivo* testing must demonstrate that the device thermally ablates targeted tissue in a controlled manner without thermal injury to adjacent, non-target tissues.

(8) Clinical testing must document the adverse event profile, provide evidence of prostatic ablation, and demonstrate that the device performs as intended under anticipated conditions of use.

(9) Training must be provided so that upon completion of the training program, the physician can:

(i) Use all safety features of the device;

(ii) Accurately target the high intensity ultrasound energy within the desired region of the prostate; and

(iii) Perform the ablation procedure in a manner that minimizes damage to non-target tissues.

(10) Labeling must include:

(i) A section that summarizes the clinical testing results, including the adverse event profile and evidence of prostate ablation achieved; and

(ii) An expiration date or shelf life for single use components.

Dated: September 25, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017–21074 Filed 9–29–17; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117****[Docket No. USCG–2017–0880]****Drawbridge Operation Regulation; Plum Island River, Newbury, MA****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 Plum Island Turnpike Bridge across Plum Island River, mile 3.3, between Newburyport and Plum Island, Massachusetts. This deviation is necessary to facilitate a planned water main repair project and allows the bridge to be closed for twenty nine days.

**DATES:** This deviation is effective from 5 a.m. on October 10, 2017 through 5 p.m. on November 7, 2017.

**ADDRESSES:** The docket for this deviation, USCG–2017–0880, 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 L. Rousseau, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard; telephone 617–223–8619, email [James.L.Rousseau2@uscg.mil](mailto:James.L.Rousseau2@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The owner of the bridge, the Massachusetts Department of Transportation, requested a temporary deviation in order to facilitate a planned water main repair next to the bridge. The project includes installing a temporary water main bypass on the bridge, preventing span operation.

The Plum Island Turnpike Bridge across Plum Island River, mile 3.3, between Newburyport and Plum Island, Massachusetts is a bascule bridge with a vertical clearance of 13 feet at mean high water and 21 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.615.

This temporary deviation allows the Plum Island Turnpike Bridge to remain closed beginning 5 a.m. October 10, 2017 until 5 p.m. November 7, 2017. Plum Island River is transited by small recreational vessels. Coordination with waterway users has indicated no

objections to the closure of the draw and no requests for openings have occurred during this period for the last three years.

Vessels that can pass under the bridge without an opening may do so at all times. The bridge will not be able to open for emergencies. The Atlantic Ocean can be used as an alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so vessel operators may 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: September 27, 2017.

**Christopher J. Bisignano,**  
*Supervisory Bridge Management Specialist,*  
*First Coast Guard District.*

[FR Doc. 2017–21067 Filed 9–29–17; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117****[Docket No. USCG–2017–0878]****Drawbridge Operation Regulation; Pequonnock River, Bridgeport, 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 Stratford Avenue Bridge across the Pequonnock River, mile 0.1 at Bridgeport, Connecticut. This deviation is necessary to facilitate a planned inspection and will allow the owner to temporarily close the draw for five days from 7:30 a.m. to 5:00 p.m. daily.

**DATES:** This deviation is effective from 7:30 a.m. on December 4, 2017 to 5 p.m. on December 8, 2017.

**ADDRESSES:** The docket for this deviation, USCG–2017–0878, 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 L. Rousseau, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard; telephone 617–223–8619, email [James.L.Rousseau2@uscg.mil](mailto:James.L.Rousseau2@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The owner of the bridge, the Connecticut Department of Transportation, requested a temporary deviation in order to facilitate planned inspection of the bridge including the entire counterweight sheave shaft/trunnion journal surfaces as well as machinery cross shaft disconnection and disassembly for associated components.

The Stratford Avenue Bridge across the Pequonnock River, mile 0.1, at Bridgeport, Connecticut is a lift bridge with a vertical clearance of 8 feet at mean high water and 14 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.219(a).

This temporary deviation will allow the Stratford Avenue Bridge to remain closed each day from 7:30 a.m. to 5 p.m. beginning December 4, 2017 until December 8, 2017. The waterway is transited by small recreational vessels and commercial fishing vessels. Coordination with waterway users has indicated no objections to the proposed closure of the draw. Vessels that can pass under the bridge without an opening may do so at all times. The bridge will not be able to open for emergencies. There is no alternate route for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so vessel operators may 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: September 27, 2017.

**Christopher J. Bisignano,**  
*Supervisory Bridge Management Specialist,*  
*First Coast Guard District.*

[FR Doc. 2017–21068 Filed 9–29–17; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117****[Docket No. USCG–2017–0927]****Drawbridge Operation Regulation; James River, Hopewell, VA****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 SR 156/ Benjamin Harrison Memorial Bridge which carries SR 156 across the James River, mile 65.0, at Hopewell, VA. The deviation is necessary to facilitate bridge maintenance. This deviation allows the bridge to remain in the closed-to-navigation position.

**DATES:** This deviation is effective without actual notice from October 2, 2017 through 5 a.m. on Saturday, October 7, 2017. For the purposes of enforcement, actual notice will be used from 7 p.m. on Saturday, September 30, 2017, until October 2, 2017.

**ADDRESSES:** The docket for this deviation, [USCG–2017–0927] 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 Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email [Michael.R.Thorogood@uscg.mil](mailto:Michael.R.Thorogood@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Virginia Department of Transportation, owner and operator of the SR 156/ Benjamin Harrison Memorial Bridge that carries SR 156, across the James River, mile 65.0, at Hopewell, VA, has requested a temporary deviation from the current operating schedule to facilitate structural steel maintenance of the vertical lift span for the drawbridge. The bridge has a vertical clearance of 50 feet above mean high water in the closed position and 145 feet above mean high water in the open position.

The current operating schedule is set out in 33 CFR 117.5. Under this temporary deviation, the bridge will be in the closed-to-navigation position from 7 p.m. to 5 a.m., daily, all week, on Saturday, September 30, 2017, through Saturday, October 7, 2017.

The James River is used by a variety of vessels including U.S. Government

and public vessels, commercial vessels, tug and barge traffic, and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation. Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will be able to open for emergencies and will open on signal during the closure period, if 30 minutes notice is given. The Coast Guard will also inform the users of the waterway through our Local Notice 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: September 27, 2017.

**Hal R. Pitts,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2017–21066 Filed 9–29–17; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165****[Docket No. USCG–2015–1081]****Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone—Corn Festival Fireworks****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a safety zone on the Illinois River in Morris, IL. This action is necessary and intended to ensure the safety of life and property on navigable waters before, during, and immediately after a shore based firework display. During the enforcement period listed below, vessels and persons are prohibited from transiting through, mooring, or anchoring within this safety zone without approval from the Captain of the Port Lake Michigan or his or her designated representative.

**DATES:** The regulations in 33 CFR 165.929 will be enforced for the location

listed in item (h)(1) in Table 165.929 to 33 CFR 165.929 from 8:15 p.m. until 9:25 p.m. on September 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email LT John Ramos, Waterways Management Division, Marine Safety Unit Chicago, at 630–986–2155, email address [D09-DG-MSUChicago-Waterways@uscg.mil](mailto:D09-DG-MSUChicago-Waterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone listed in 33 CFR 165.929: Safety Zone; Corn Festival Fireworks listed as item (h)(1) in Table 165.929 of 33 CFR 165.929. Section 165.929 lists many annual events requiring safety zones in the Captain of the Port Lake Michigan zone. This safety zone will encompass all waters of the Illinois River within an 560 foot radius from approximate launch position at 41°21.173' N. 88°25.101' W. (NAD 83). This safety zone will be enforced on September 30, 2017 from 8:15 p.m. until 9:25 p.m.

All vessels must obtain permission from the Captain of the Port Lake Michigan, or his or her designated on-scene representative to enter, move within, or exit this safety zone during the enforcement times listed in this notice of enforcement. All requests must be made in advance and approved by the Captain of the Port Lake Michigan before transits will be authorized. Approvals for entry will be granted on a case-by-case basis. All vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Lake Michigan, or his or her on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.929, Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone, and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port Lake Michigan or a designated on-scene representative may be contacted via VHF Channel 16 during the event.

Dated: September 26, 2017.

**Thomas J. Stuhldreier,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. 2017–21041 Filed 9–29–17; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2015-0727; FRL-9966-09]

### Fluoxastrobin; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of fluoxastrobin in or on multiple commodities which are identified and discussed later in this document. Arysta LifeScience North America, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective October 2, 2017. Objections and requests for hearings must be received on or before December 1, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2015-0727, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDfRNotices@epa.gov](mailto:RDfRNotices@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this action apply to me?

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

determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2015-0727 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 1, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2015-0727, by one of the following methods:

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

delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

### II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 16, 2016 (81 FR 14030) (FRL-9942-86), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F8406) by Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, North Carolina, 27513. The petition requested that 40 CFR 180.609 be amended by establishing tolerances for residues of the fungicide fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl] (5,6-dihydro-1,4,2-dioxazin-3-yl)methanone *O*-methyloxime, and its *Z* isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl] (5,6-dihydro-1,4,2-dioxazin-3-yl)methanone *O*-methyloxime, in or on avocado at 0.9 parts per million (ppm); barley, grain at 0.4 ppm; barley, hay at 15 ppm; barley, straw at 15 ppm; rapeseed subgroup 20A at 0.8 ppm; and dried shelled pea and bean (except soybean) subgroup 6C at 0.2 ppm. No comments were submitted on this notice of filing. Based on data submitted with the petition, the tolerances established by the Agency in this action differ slightly from what the petitioner requested. The reasons for these deviations are discussed in Unit IV.C.

### III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will

result to infants and children from aggregate exposure to the pesticide chemical residue . . . .”

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluoxastrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluoxastrobin follows.

#### A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In mammals, the liver and kidney were the main target organs. Liver effects (cholestasis) were observed in dogs following subchronic and chronic oral exposures. Dogs were the more sensitive species, with liver effects in dogs occurring at a 35-fold lower dose than elicited adverse effects in other species. Kidney effects were observed in rats and dogs following subchronic exposures, but not following chronic exposures. In rats, effects were also observed in the adrenal glands, urinary bladder, and urethra. There were dose-related changes in the liver and kidneys of mice, however, the changes were not considered to be adverse.

There was no evidence of increased quantitative or qualitative fetal or offspring susceptibility in the developmental toxicity studies in rats or rabbits or the two-generation reproduction toxicity study in rats. There were no maternal or developmental effects in the rat developmental study. In the developmental toxicity study in rabbits, maternal effects (cold ears, transient body-weight loss, and decreased food consumption) occurred in the absence of fetal toxicity. In the two-generation reproduction study in rats, offspring effects (decreased body weights, delayed preputial separation, and incomplete ossification) occurred at the same dose as parental toxicity (decreased premating absolute body weight and body-weight gain).

Fluoxastrobin has low acute toxicity via the oral, dermal, and inhalation routes of exposure. Overall, it is mildly irritating to the eyes, but is neither a dermal irritant nor a dermal sensitizer. There were no signs of neurotoxicity or immunotoxicity in the database. Fluoxastrobin is classified as “Not Likely to be Carcinogenic to Humans” based on the absence of treatment-related tumors in two adequate rodent carcinogenicity studies. There was no concern for mutagenicity.

Specific information on the studies received and the nature of the adverse effects caused by fluoxastrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document *Human Health Risk Assessment in Support of Application to Avocado, Barley, Rapeseed subgroup 20A, and Dried Shelled Pea and Bean* on pages 14

and 15 in docket ID number EPA-HQ-OPP-2015-0727.

#### B. Toxicological Points of Departure/ Levels of Concern

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

A summary of the toxicological endpoints for fluoxastrobin used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUOXASTROBIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

| Exposure/scenario                                                          | Point of departure and uncertainty/safety factors                                                                                                            | RfD, PAD, LOC for risk assessment                         | Study and toxicological effects                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Acute dietary (All Populations)                                            | No appropriate toxicological effect attributable to a single dose was observed. Therefore, a dose and endpoint were not identified for this risk assessment. |                                                           |                                                                                                                                                                                                                                                              |
| Chronic dietary (All populations)                                          | NOAEL = 1.5 mg/kg/day.<br>UF <sub>A</sub> = 10x .....<br>UF <sub>H</sub> = 10x .....<br>FQPA SF = 1x .....                                                   | Chronic RfD = 0.015 mg/kg/day.<br>cPAD = 0.015 mg/kg/day. | Chronic Toxicity Study in Dogs.<br>LOAEL = M/F 8.1/7.7 mg/kg/day based on body weight reductions and hepatocytomegaly and cytoplasmic changes associated with increased serum liver alkaline phosphatase indicative of cholestasis.                          |
| Incidental oral short-term (1–30 days) and Intermediate-term (1–6 months). | NOAEL = 3.0 mg/kg/day.<br>UF <sub>A</sub> = 10x .....<br>UF <sub>H</sub> = 10x .....<br>FQPA SF = 1x .....                                                   | LOC for MOE = <100.                                       | 90-Day Toxicity in Dogs.<br>LOAEL = 24 mg/kg/day based on reductions in body-weight gain and food efficiency, liver effects (cholestasis), and kidney effects (increased relative weights in females, degeneration of proximal tubular epithelium in males). |

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUOXASTROBIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

| Exposure/scenario                                                 | Point of departure and uncertainty/safety factors                                                                                                                                         | RfD, PAD, LOC for risk assessment                                   | Study and toxicological effects                                                                                                                                                                                                                              |
|-------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Dermal short-term (1–30 days) and intermediate-term (1–6 months). | Oral study NOAEL = 3.0 mg/kg/day (dermal absorption rate = 2.3%.<br>UF <sub>A</sub> = 10x .....<br>UF <sub>H</sub> = 10x .....<br>FQPA SF = 1x .....                                      | Residential LOC for MOE = <100.<br>Occupational LOC for MOE = <100. | 90-Day Toxicity in Dog.<br>LOAEL = 24 mg/kg/day based on reductions in body-weight gain and food efficiency, liver effects (cholestasis), and kidney effects (increased relative weights in females, degeneration of proximal tubular epithelium in males).  |
| Inhalation short and Intermediate-Term.                           | Oral study NOAEL = 3.0 mg/kg/day (inhalation toxicity is considered equivalent to oral toxicity).<br>UF <sub>A</sub> = 10x .....<br>UF <sub>H</sub> = 10x .....<br>FQPA SF = 1x .....     | Residential LOC for MOE = <100.<br>Occupational LOC for MOE = <100. | 90-Day Toxicity in Dogs.<br>LOAEL = 24 mg/kg/day based on reductions in body-weight gain and food efficiency, liver effects (cholestasis), and kidney effects (increased relative weights in females, degeneration of proximal tubular epithelium in males). |
| Cancer (Oral, dermal, inhalation).                                | Classification: Fluoxastrobin is classified as “not likely to be carcinogenic to humans” based on the absence of treatment-related tumors in two adequate rodent carcinogenicity studies. |                                                                     |                                                                                                                                                                                                                                                              |

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF<sub>A</sub> = extrapolation from animal to human (interspecies). UF<sub>H</sub> = potential variation in sensitivity among members of the human population (intraspecies).

### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluoxastrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing fluoxastrobin tolerances in 40 CFR 180.609. EPA assessed dietary exposures from fluoxastrobin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for fluoxastrobin; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM–FCID, Version 3.16, food consumption data from the 2003–2008 U.S. Department of Agriculture’s (USDA’s) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance-level residues for livestock commodities, average field trial residues for some crop commodities, and percent crop treated (PCT) and percent crop treated for new use (PCT<sub>n</sub>) estimates for some commodities. DEEM version 7.81 default processing factors were assumed, except for tolerances that were established for processed commodities

or when processing studies showed no concentration.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluoxastrobin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.

- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.

- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows: corn, 1.0%; peanuts, 2.5%; peppers, 2.5%; potatoes, 1.0%; soybeans, 1.0%; and wheat, 2.5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), and proprietary market surveys for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis and maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 2.5%. The maximum PCT figure is the highest observed maximum value reported within the most recent 6 years of available public and private market survey data for the

existing use and rounded up to the nearest multiple of 5%, except for situations in which the maximum PCT is less than 2.5%. In cases where the estimated value is less than 2.5% but greater than 1%, the average and maximum PCT used are 2.5%. If the estimated value is less than 1%, 1% is used as the average PCT and 2.5% is used as the maximum PCT.

The Agency estimated the PCT for new uses as follows: avocado, 12%; barley, 16%; canola, 9%; and dry beans/peas, 14%.

EPA estimates percent crop treated for new uses (PCTn) of fluoxastrobin based on the PCT of the dominant pesticide (*i.e.*, the one with the greatest PCT) used on that crop over the three most recent years of available data. Comparisons are only made among pesticides of the same pesticide types (*i.e.*, the dominant fungicide on the crop is selected for comparison with a new fungicide). The PCTs included in the analysis may be for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year. Typically, EPA uses USDA/NASS as the source for raw PCT data because it is publicly available and does not have to be calculated from available data sources. When a specific use site is not surveyed by USDA/NASS, EPA uses proprietary market research data or other publicly available state data when 80% or more of the crop acreage is grown in that state and calculates the PCTn.

This estimated PCTn, based on the average PCT of the market leader, is appropriate for use in the chronic dietary risk assessment. This method of estimating a PCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial five years of actual use. The predominant factors that bear on whether the estimated PCTn could be exceeded are (1) the extent of pest pressure on the crops in question; (2) the pest spectrum of the new pesticide in comparison with the market leaders as well as whether the market leaders are well-established for this use; and (3) resistance concerns with the market leaders. EPA has examined the relevant data and determined that it is unlikely that the actual PCT with fluoxastrobin on avocado, barley, canola (rapeseed subgroup 20A) and dried shelled pea and bean (crop subgroup 6C) will exceed the PCTn within the next five years.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT and PCTn estimates

are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which fluoxastrobin may be applied in a particular area.

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

The estimated drinking water concentrations (EDWCs) in surface water resulting from the proposed fluoxastrobin uses were calculated using the pesticide water calculator (PWC). Groundwater EDWCs for fluoxastrobin were derived for the proposed and existing uses using PRZM-Groundwater (PRZM GW). Based on PRZM GW, the EDWCs of fluoxastrobin for chronic exposures for non-cancer assessments are estimated to be 47.8 ppb for surface water and 182 ppb for ground water. The more conservative modeled estimate of drinking water concentrations (182 ppb) was directly entered into the dietary exposure model to assess the contribution to drinking water and chronic dietary risk.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.*, for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluoxastrobin is currently registered for the following uses that could result in residential exposures: Broadcast control of diseases on turf, including lawns and golf courses. EPA assessed residential exposure using the following assumptions:

i. *Residential Handler Exposure:* All registered fluoxastrobin product labels with residential use sites (*e.g.*, turf and ornamentals) require that handlers wear specific clothing (*e.g.*, long sleeve shirt/long pants) and/or use personal-protective equipment (PPE). Therefore, the Agency has made the assumption that these products are not intended for homeowner use, and has not conducted a quantitative residential handler assessment.

ii. *Residential Post-Application Exposure:* Adults and children performing physical activities on turf and ornamentals during post-application activities (*e.g.*, high-contact lawn activities, mowing, and gardening) may receive dermal exposure to fluoxastrobin residues. Young children 1 to <2 years old may also receive incidental oral post-application exposure to fluoxastrobin from treated turf. Residential post-application exposure is expected to be short-term in duration. Intermediate-term exposures are not likely because of the intermittent nature of exposure to homeowners. Post-application dermal and hand-to-mouth exposure scenarios were combined for children 1 <2 years old. This combination was considered a protective estimate of children's exposure. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide>.

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

EPA has not found fluoxastrobin to share a common mechanism of toxicity with any other substances, and fluoxastrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluoxastrobin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine

which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides>.

#### *D. Safety Factor for Infants and Children*

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

2. *Prenatal and postnatal sensitivity.* As discussed in Unit III.A., there is no evidence of quantitative or qualitative fetal or offspring susceptibility in the developmental toxicity studies in rats or rabbits nor in two-generation reproduction studies in rats.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

- i. The toxicity database for fluoxastrobin is complete.
- ii. There is no indication that fluoxastrobin is a neurotoxic chemical, and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.
- iii. There is no evidence that fluoxastrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the two-generation reproduction study.

- iv. There are no residual uncertainties identified in the exposure databases. A partially refined chronic aggregate dietary (food and drinking water) exposure and risk assessments were conducted. The assumptions of the dietary assessment include tolerance-level residues for livestock commodities, average field-trial residues for some crop commodities, and PCT and PCTn estimates for some commodities. EPA made conservative (protective) assumptions in the ground

and surface water modeling used to assess exposure to fluoxastrobin in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluoxastrobin.

#### *E. Aggregate Risks and Determination of Safety*

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fluoxastrobin is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluoxastrobin from food and water will utilize 31% of the cPAD for the general U.S. population and 77% of the cPAD for all infants <1-year-old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluoxastrobin is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluoxastrobin is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluoxastrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 150 for adults and 100 for children (1–2 years old). The Agency does not have concern if the MOEs are

equal to or greater than 100.

Furthermore, many conservative assumptions were incorporated into the assessment, so the actual exposure and risk are likely to be considerably lower than the estimates in the Agency assessment.

#### *4. Intermediate-term risk.*

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

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fluoxastrobin is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluoxastrobin residues.

### **IV. Other Considerations**

#### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (liquid chromatography/mass spectrometry) is available to enforce the tolerance expression. Method No. 00604 is available for plant commodities and Method No. 00691 is available for livestock commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

#### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural

practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for fluoxastrobin.

#### C. Revisions to Petitioned-For Tolerances

EPA is establishing tolerance levels for the following commodities that differ from what the petitioner requested: Avocado from 0.9 ppm to 1.0 ppm; barley, grain from 0.4 ppm to 0.40 ppm; rapeseed subgroup 20A from 0.8 ppm to 0.70 ppm; pea and bean, dried shelled, except soybean, subgroup 6C from 0.2 ppm to 0.20 ppm. The tolerances for avocado and rapeseed subgroup 20A differ because the Agency used different inputs for determining those tolerance levels. Although the petitioner and the Agency both used the Organization for Economic Co-operation and Development (OECD) calculation procedures to obtain tolerance levels, the Agency determined that some of the trials were not independent. In addition, if a higher residue value was observed at a preharvest interval (PHI) longer than the minimum labeled PHI, then the Agency used the highest value.

The Agency added a significant figure to the tolerances for barley, grain and pea and bean, dried shelled, except soybean to conform to current Agency policy on significant figures. In addition, the Agency has modified the commodity definition for dried shelled pea and bean (crop subgroup 6C) to pea and bean, dried shelled, except soybean, subgroup 6C in order for consistency with the Agency's food and feed commodity vocabulary.

#### V. Conclusion

Therefore, tolerances are established for residues of fluoxastrobin, and its Z-isomer in or on avocado at 1.0 ppm; barley, grain at 0.40 ppm; barley, hay at 15 ppm; barley, straw at 15 ppm; rapeseed subgroup 20A at 0.70 ppm; and pea and bean, dried shelled, except soybean, subgroup 6C at 0.20 ppm.

#### VI. Statutory and Executive Order Reviews

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

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

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

described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

#### VII. Congressional Review Act

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

#### List of Subjects in 40 CFR Part 180

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

Dated: August 31, 2017.

**Michael Goodis,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.609, add alphabetically "avocado", "barley, grain"; "barley, hay"; "barley, straw"; "pea and bean, dried shelled, except soybean, subgroup 6C"; and "rapeseed, subgroup 20A" to the table in paragraph (a)(1) to read as follows:

#### § 180.609 Fluoxastrobin; tolerances for residues.

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

| Commodity                                                     | Parts per million |
|---------------------------------------------------------------|-------------------|
| Avocado .....                                                 | 1.0               |
| Barley, grain .....                                           | 0.40              |
| Barley, hay .....                                             | 15                |
| Barley, straw .....                                           | 15                |
| * * * * *                                                     | *                 |
| Pea and bean, dried shelled, except soybean, subgroup 6C .... | 0.20              |
| * * * * *                                                     | *                 |
| Rapeseed, subgroup 20A .....                                  | 0.70              |
| * * * * *                                                     | *                 |

\* \* \* \* \*

[FR Doc. 2017-21113 Filed 9-29-17; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 261****[EPA-R06-RCRA-2017-0254; FRL-9968-61-Region 6]****Hazardous Waste Management System; Identification and Listing of Hazardous Waste****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is granting a petition submitted by Samsung Austin Semiconductor (Samsung) to exclude from hazardous waste control (or delist) a certain solid waste. This final rule responds to the petition submitted by Samsung to have the copper filter cake from the electroplating process excluded, or delisted from the definition of a hazardous waste. The Copper filter cake is listed as F006, wastewater treatment sludges from electroplating operations. The basis of the listing is cadmium, hexavalent chromium, nickel, and cyanide (complexed). After careful analysis and evaluation of comments submitted by the public, the EPA has concluded that the petitioned wastes are not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to the copper filter cake generated at Samsung Austin Semiconductor's Austin, Texas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills, but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

**DATES:** This final rule is effective on October 2, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-RCRA-2017-0254. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., 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 electronically through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For technical information regarding the Samsung Austin Semiconductor petition, contact Michelle Peace at 214-665-7430 or by email at [peace.michelle@epa.gov](mailto:peace.michelle@epa.gov).

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

- I. Overview Information
  - A. What action is EPA finalizing?
  - B. Why is EPA approving this delisting?
  - C. What are the limits of this exclusion?
  - D. How will Samsung Austin Semiconductor manage the waste if it is delisted?
  - E. When is the final delisting exclusion effective?
  - F. How does this final rule affect states?
- II. Background
  - A. What is a "delisting"?
  - B. What regulations allow facilities to delist a waste?
  - C. What information must the generator supply?
- III. EPA's Evaluation of the Waste Data
  - A. What waste and how much did Samsung Austin Semiconductor petition EPA to delist?
  - B. How did Samsung Austin Semiconductor sample and analyze the waste data in this petition?
- IV. Public Comments Received on the Proposed Exclusion
  - Who submitted comments on the proposed rule?
- V. Statutory and Executive Order Reviews

**I. Overview Information***A. What action is EPA finalizing?*

The EPA is finalizing:

(1) The decision to grant Samsung Austin Semiconductor's petition to have its copper filter cake excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions; and

(2) To use the Delisting Risk Assessment Software v.3.0.35 to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

After evaluating the petition, EPA proposed a rule, on July 14, 2017, to exclude the Samsung Austin Semiconductor copper filter cake waste from the lists of hazardous wastes under §§ 261.31 and 261.32. There were no comments received on this rulemaking.

*B. Why is EPA approving this delisting?*

Samsung's petition requests an exclusion from the F006 waste listing

pursuant to 40 CFR 260.20 and 260.22. Samsung does not believe that the petitioned waste meets the criteria for which EPA listed it. Samsung also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)-(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous, with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from Samsung is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Austin, Texas facility.

*C. What are the limits of this exclusion?*

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261, appendix IX and the conditions contained herein are satisfied. The conditional exclusion applies to 750 cubic yards of copper filter cake sludge generated annually from the Samsung Austin Semiconductor facility in Austin, TX.

*D. How will Samsung Austin Semiconductor manage the waste if it is delisted?*

Storage containers of the copper filter cake will be transported to an

authorized, solid waste landfill (e.g., RCRA Subtitle D landfill, commercial/ industrial solid waste landfill, etc.) for disposal. Any plans for recycling must be addressed through the Hazardous Waste Recycling regulations.

*E. When is the final delisting exclusion effective?*

This rule is effective October 2, 2017. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

*F. How does this final rule affect states?*

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

*Here are the details:* We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Samsung Austin Semiconductor transports the petitioned waste to or manages the waste in any State with delisting authorization, Samsung Austin Semiconductor must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

## II. Background

*A. What is a delisting?*

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

*B. What regulations allow facilities to delist a waste?*

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

*C. What information must the generator supply?*

Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where

he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

## III. EPA's Evaluation of the Waste Data

*A. What waste and how much did Samsung Austin Semiconductor petition EPA to delist?*

In November 2015, Samsung petitioned EPA to exclude from the lists of hazardous wastes contained in §§ 261.31 and 261.32, filter cake (F006) generated from its facility located in Austin, Texas. The waste falls under the classification of listed waste pursuant to §§ 261.31 and 261.32. Specifically, in its petition, Samsung requested that EPA grant a conditional exclusion for 750 cubic yards of F006 filter cake.

The 40 CFR part 261 appendix VII hazardous constituents which are the basis for listing can be found in Table 1.

TABLE 1—EPA WASTE CODES FOR COPPER FILTER CAKE AND THE BASIS FOR LISTING

| Waste code | Basis for listing                                          |
|------------|------------------------------------------------------------|
| F006 ..... | Cadmium, hexavalent chromium, nickel, cyanide (complexed). |

*B. How did Samsung Austin Semiconductor sample and analyze the waste data in this petition?*

To support its petition, Samsung Austin Semiconductor submitted:

(1) Historical information on waste generation and management practices; and

(2) Analytical results from eight samples for total and TCLP concentrations of compounds of concern (COC)s;

TABLE 2—ANALYTICAL RESULTS/MAXIMUM ALLOWABLE DELISTING CONCENTRATION COPPER FILTER CAKE SAMSUNG AUSTIN SEMICONDUCTOR, AUSTIN, TEXAS

| Constituent             | Maximum total concentration (mg/kg) | Maximum TCLP concentration (mg/L) | Maximum TCLP delisting level (mg/L) |
|-------------------------|-------------------------------------|-----------------------------------|-------------------------------------|
| Acetone .....           | 0.0013                              | 0.24                              | 2070.0                              |
| Arsenic .....           | 3.6                                 | 0.098                             | 1.66                                |
| Barium .....            | 5.30                                | 0.13                              | 100.0                               |
| Cadmium .....           | 0.75                                | 0.004                             | 0.362                               |
| Carbon disulfide .....  | 2.7                                 | 0.043                             | 224.75                              |
| Chromium .....          | 42                                  | 0.12                              | 5.0                                 |
| Chromium(VI) (+6) ..... | 1.7                                 | 0.072                             | 5.0                                 |
| Cobalt .....            | 1.6                                 | 0.035                             | 1.36                                |
| Copper .....            | 14600                               | 5.4                               | 97.1                                |

TABLE 2—ANALYTICAL RESULTS/MAXIMUM ALLOWABLE DELISTING CONCENTRATION COPPER FILTER CAKE SAMSUNG AUSTIN SEMICONDUCTOR, AUSTIN, TEXAS—Continued

| Constituent    | Maximum total concentration (mg/kg) | Maximum TCLP concentration (mg/L) | Maximum TCLP delisting level (mg/L) |
|----------------|-------------------------------------|-----------------------------------|-------------------------------------|
| Lead .....     | 6.3                                 | 0.11                              | 2.45                                |
| Nickel .....   | 25.7                                | 0.078                             | 53.8                                |
| Selenium ..... | 1.4                                 | 0.072                             | 1.0                                 |
| Silver .....   | 0.95                                | 0.0012                            | 5.0                                 |
| Thallium ..... | 1.7                                 | ND                                | 0.1458                              |
| Tin .....      | 7.6                                 | ND                                | 22.5                                |
| Toluene .....  | 2.5                                 | ND                                | 60.1                                |
| Vanadium ..... | 25.8                                | 0.014                             | 14.36                               |
| Zinc .....     | 43.0                                | 0.21                              | 797                                 |

**Notes:** These levels represent the highest constituent concentration found in any one sample and does not necessarily represent the specific level found in one sample.

#### IV. Public Comments Received on the Proposed Exclusion

*Who submitted comments on the proposed rule?*

The EPA received no public comments on the July 14, 2017, proposed rule.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore, is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, “Federalism”, (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this rule does not have tribal implications, as specified in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, “Civil Justice Reform”, (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today’s action under section 801 because this is a rule of particular applicability. Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The Agency’s risk assessment did not identify risks from management of this material in an authorized, solid waste landfill (*e.g.*, RCRA Subtitle D landfill, commercial/industrial solid waste landfill, etc.). Therefore, EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

**List of Subjects in 40 CFR Part 261**

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: September 19, 2017.

**Wren Stenger,**

*Director, Multimedia Division, Region 6.*

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

■ 1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. In table 1 of appendix IX to part 261 add the entry “Samsung” in alphabetical order to read as follows:

**Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22**

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility           | Address               | Waste description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| *<br>Samsung ..... | *<br>Austin, TX ..... | *<br>Copper Filter Cake (EPA Hazardous Waste Numbers F006) generated at a maximum rate of 750 cubic yards annually.<br>For the exclusion to be valid, Samsung must implement a verification testing program for each of the waste streams that meets the following Paragraphs:<br>(1) Delisting Levels:<br>All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph.<br>Copper Filter Cake. Leachable Concentrations (mg/l): Acetone—2070.0; Arsenic—1.66; Barium—100.0; Cadmium—0.362; Carbon Disulfide—224.75; Chromium—5.0; Chromium (VI)—5.0; Cobalt—1.36; Copper—97.1; Lead—2.45; Nickel—53.8; Selenium—1.0; Silver—5.0; Thallium—0.01458; Tin—22.5; Toluene—60.1; Vanadium—14.36; Zinc—797<br>(2) Waste Holding and Handling:<br>(A) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for the Copper Filter cake is verified.<br>(B) If constituent levels in any sample and retest sample taken by Samsung exceed any of the delisting levels set in paragraph (1) for the Copper Filter cake, Samsung must do the following:<br>(i) notify EPA in accordance with paragraph (5) and<br>(ii) manage and dispose the Copper Filter cake as hazardous waste generated under Subtitle C of RCRA.<br>(3) Testing Requirements:<br>Samsung must perform analytical testing by sampling and analyzing the Copper Filter cake as follows:<br>(i) Collect a representative sample of the Copper Filter cake for analysis of all constituents listed in paragraph (1) prior to disposal.<br>(ii) The samples for the annual testing shall be a representative sample, according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the Samsung Copper filter cake is representative for all constituents listed in paragraph (1).<br>(4) Data Submittals:<br>Samsung must submit the information described below. If Samsung fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Samsung must:<br>(A) Submit the data obtained through paragraph 3 to the Section Chief, 6MM-RP, Multimedia Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD-ROM or comparable electronic media.<br>(B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.<br>(C) Furnish these records and data when either EPA or the State of Texas requests them for inspection.<br>(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted:<br>“Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.<br>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. |

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|          |         | <p>If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."</p> <p>(5) Reopener:</p> <p>(A) If any time after disposal of the delisted waste Samsung possesses or is otherwise made aware of any environmental data (including but not limited to underflow water data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(B) If either the verification testing (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, Samsung must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(C) If Samsung fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from receipt of the Division Director's notice to present such information.</p> <p>(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.</p> <p>(6) Notification Requirements:</p> <p>Samsung must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.</p> <p>(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.</p> <p>(B) For onsite disposal, a notice should be submitted to the State to notify the State that disposal of the delisted materials has begun.</p> <p>(C) Update one-time written notification, if it ships the delisted waste into a different disposal facility.</p> <p>(D) Failure to provide this notification will result in a violation of the delisting exclusion and a possible revocation of the decision.</p> |
| *        | *       | *                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

\* \* \* \* \*

[FR Doc. 2017-21112 Filed 9-29-17; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 161020985-7181-02]

RIN 0648-XF712

### Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of the 2017 Atka mackerel incidental catch allowance (ICA) for the Bering Sea subarea and Eastern Aleutian district (BS/EAI) to the Amendment 80 cooperative allocations in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2017 total allowable catch of Atka mackerel in the BSAI to be fully harvested.

**DATES:** Effective 12 hrs Alaska local time (A.l.t.), September 27, 2017 through 2400 hrs, A.l.t., December 31, 2017.

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

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

The 2017 Atka mackerel ICA for the BS/EAI is 1,000 metric tons (mt) and 2017 Atka mackerel total allowable catch allocated to the Amendment 80 cooperatives is 26,694 mt as established by the final 2017 and 2018 harvest

specifications for groundfish in the BSAI (82 FR 11826; February 27, 2017).

The Administrator, Alaska Region, NMFS, has determined that 900 mt of the Atka mackerel ICA for the BS/EAI will not be harvested. Therefore, in accordance with § 679.91(f), NMFS reallocates 900 mt of Atka mackerel

from the BS/EAI ICA to the Amendment 80 cooperatives in the BSAI. In accordance with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated Atka mackerel following the procedures set forth in § 679.91(f)(3).

The harvest specifications for Atka mackerel included in the harvest

specifications for groundfish in the BSAI (82 FR 11826; February 27, 2017) are revised as follows: 100 mt of Atka mackerel for the BS/EAI ICA and 27,594 mt of Atka mackerel for the Amendment 80 cooperative allocations in the BS/EAI. Table 6 is revised and republished in its entirety as follows:

TABLE 6—FINAL 2017 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC  
[Amounts are in metric tons]

| Sector <sup>1</sup>                 | Season <sup>2 3 4</sup>  | 2017 allocation by area               |                                        |                           |
|-------------------------------------|--------------------------|---------------------------------------|----------------------------------------|---------------------------|
|                                     |                          | Eastern Aleutian district/ Bering Sea | Central Aleutian district <sup>5</sup> | Western Aleutian district |
| TAC .....                           | n/a .....                | 34,500                                | 18,000                                 | 12,500                    |
| CDQ reserve .....                   | Total .....              | 3,692                                 | 1,926                                  | 1,338                     |
|                                     | A .....                  | 1,846                                 | 963                                    | 669                       |
|                                     | Critical Habitat .....   | n/a                                   | 578                                    | 401                       |
|                                     | B .....                  | 1,846                                 | 963                                    | 669                       |
|                                     | Critical Habitat .....   | n/a                                   | 578                                    | 401                       |
| Non-CDQ TAC .....                   | n/a .....                | 30,809                                | 16,074                                 | 11,163                    |
| ICA .....                           | Total .....              | 100                                   | 75                                     | 20                        |
| Jig <sup>6</sup> .....              | Total .....              | 149                                   | 0                                      | 0                         |
| BSAI trawl limited access .....     | Total .....              | 2,966                                 | 1,600                                  | 0                         |
|                                     | A .....                  | 1,483                                 | 800                                    | 0                         |
|                                     | Critical Habitat .....   | n/a                                   | 480                                    | 0                         |
|                                     | B .....                  | 1,483                                 | 800                                    | 0                         |
|                                     | Critical Habitat .....   | n/a                                   | 480                                    | 0                         |
| Amendment 80 sectors .....          | Total .....              | 27,594                                | 14,399                                 | 11,143                    |
|                                     | A .....                  | 13,797                                | 7,200                                  | 5,571                     |
|                                     | B .....                  | 13,797                                | 7,200                                  | 5,571                     |
| Alaska Groundfish Cooperative ..... | Total <sup>6</sup> ..... | 15,629                                | 8,545                                  | 6,852                     |
|                                     | A .....                  | 7,815                                 | 4,273                                  | 3,426                     |
|                                     | Critical Habitat .....   | n/a                                   | 2,564                                  | 2,056                     |
|                                     | B .....                  | 7,815                                 | 4,273                                  | 3,426                     |
|                                     | Critical Habitat .....   | n/a                                   | 2,564                                  | 2,056                     |
| Alaska Seafood Cooperative .....    | Total <sup>6</sup> ..... | 11,965                                | 5,854                                  | 4,291                     |
|                                     | A .....                  | 5,983                                 | 2,927                                  | 2,146                     |
|                                     | Critical Habitat .....   | n/a                                   | 1,756                                  | 1,287                     |
|                                     | B .....                  | 5,983                                 | 2,927                                  | 2,146                     |
|                                     | Critical Habitat .....   | n/a                                   | 1,756                                  | 1,287                     |

<sup>1</sup> Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

<sup>2</sup> Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

<sup>3</sup> The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

<sup>4</sup> Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

<sup>5</sup> Section 679.20(a)(8)(ii)(C)(1)(i) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of critical habitat; § 679.20(a)(8)(ii)(C)(1)(ii) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and § 679.20(a)(8)(ii)(C)(2) requires the TAC in Area 543 shall be no more than 65 percent of ABC.

<sup>6</sup> Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

This will enhance the socioeconomic well-being of harvesters dependent upon Atka mackerel in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of Atka mackerel ICA in the BS/EAI, (2) the harvest capacity and stated intent on future harvesting patterns of the Amendment 80 cooperatives that participate in this BS/EAI fishery.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public

interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Atka mackerel from the BS/EAI ICA to the Amendment 80 cooperatives in the BSAI. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate

notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 19, 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 § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: September 27, 2017.

**Alan D. Risenhoover,**

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

[FR Doc. 2017-21042 Filed 9-27-17; 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-XF648

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in 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 pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season apportionment of the 2017 total allowable catch of pollock for Statistical Area 610 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 27, 2017, through 1200 hrs, A.l.t., October 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 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 C season apportionment of the 2017 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 23,483 metric tons (mt) as established by the final 2017 and 2018 harvest specifications for groundfish in the GOA (82 FR 12032, February 27, 2017) and inseason adjustment (82 FR 41567, September 1, 2017).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season apportionment of the 2017 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 23,300 mt and is setting aside the remaining 183 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 pollock in Statistical Area 610 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 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)(C) 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 pollock in Statistical Area 610 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 September 26, 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: September 27, 2017.

**Alan D. Risenhoover,**

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

[FR Doc. 2017-21031 Filed 9-27-17; 4:15 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 82, No. 189

Monday, October 2, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2017-0814; Product Identifier 2017-NM-066-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 737-600, -700, -700C, -800, -900, and -900ER series airplanes. This proposed AD was prompted by significant changes made to the airworthiness limitations (AWL) related to fuel tank ignition prevention and the nitrogen generation system. This proposed AD would require revision of the maintenance or inspection program, as applicable, to include the latest revision of the AWLs. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by November 16, 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 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; Internet <https://www.myboeingfleet.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-2017-0814; 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:** Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6499; fax: 425-917-6590; email: [takahisa.kobayashi@faa.gov](mailto:takahisa.kobayashi@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-2017-0814; Product Identifier 2017-NM-066-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

#### Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a final rule titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, that rule included Amendment 21-78, which established Special Federal Aviation Regulation No. 88 ("SFAR 88") at 14 CFR part 21. Subsequently, SFAR 88 was amended by: Amendment 21-82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002) and Amendment 21-83 (67 FR 72830, December 9, 2002; corrected at 68 FR 37735, June 25, 2003, to change "21-82" to "21-83").

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the final rule published on May 7, 2001, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with another latent

condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We issued AD 2008–10–10 R1, Amendment 39–16164 (75 FR 1529, January 12, 2010) (“AD 2008–10–10 R1”), which applies to certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. AD 2008–10–10 R1 requires incorporation of fuel system AWLs and also requires an initial inspection to phase in certain repetitive inspections, and repair if necessary. The fuel system AWLs were developed to satisfy SFAR 88 requirements and included in the Airworthiness Limitations Section (ALS) of the manufacturer’s Instructions for Continued Airworthiness. Since we issued AD 2008–10–10 R1, the ALS has been significantly revised by the manufacturer to correct technical and editorial errors and also to add new requirements. Those changes affect the fuel system and nitrogen generation system AWLs. We have determined that the specific revisions of the ALS mandated by AD 2008–10–10 R1, and the revisions of the ALS that have been delivered with airplanes as part of the type design and airworthiness certificate, on or after March 31, 2006 (see paragraph (c), “Applicability,” of AD 2008–10–10 R1, which applied to airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued before March 31, 2006), are inadequate to provide information necessary to maintain critical design features and perform inspections.

We propose to adopt this new AD to require revising the maintenance or inspection program, as applicable, to incorporate the AWLs provided in Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, dated January 2017 (the latest revision of the ALS). We are proposing this AD to prevent the potential for ignition sources inside the fuel tanks and also to prevent increasing the flammability exposure of the center fuel tank caused by latent failures, alterations, repairs, or maintenance actions, which could result in a fuel tank explosion and consequent loss of an airplane.

We have determined that accomplishing the revision required by paragraph (g) of this proposed AD would terminate the following requirements for that airplane:

- All requirements of AD 2008–10–10 R1.
- The revision required by paragraphs (h) and (h)(1) of AD 2008–06–03,

Amendment 39–15415 (73 FR 13081, March 12, 2008).

- The revision required by paragraph (g) of AD 2008–17–15, Amendment 39–15653 (73 FR 50714, August 28, 2008).
- The revision required by paragraph (k) of AD 2011–18–03, Amendment 39–16785 (76 FR 53317, August 26, 2011).
- All requirements of AD 2013–15–17, Amendment 39–17533 (78 FR 52838, August 27, 2013).

#### **Airworthiness Limitations Based on Type Design**

The FAA recently became aware of an issue related to the applicability of ADs that require incorporation of the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness (ICA) into an operator’s maintenance or inspection program.

U.S. operators must operate their airplanes in an airworthy condition, in accordance with 14 CFR 91.7(a). Included in this obligation is the requirement to perform any maintenance or inspections specified in the ALS, and in accordance with the ALS as specified in 14 CFR 43.16 and 91.403(c), unless an alternative has been approved by the FAA.

When a type certificate is issued for a type design, the specific ALS, including its revision level, is part of that type design, as specified in 14 CFR 21.31(c).

The sum effect of these operational and maintenance requirements is an obligation to comply with the ALS revision defined in the type design referenced in the manufacturer’s conformity statement. This obligation may introduce a conflict with an AD if the AD requires a specific ALS revision for new airplanes that are delivered with a later ALS revision as part of their type design.

The FAA has approved alternative methods of compliance (AMOCs) that allow operators to incorporate the most recent ALS revision into their maintenance/inspection programs, in lieu of the ALS revision required by the AD. This enables the operator to comply with both the AD and the type design.

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to mandate the latest ALS

revision as of the effective date of an AD, if we are to mandate a specific ALS revision, and limit the applicability to those airplanes delivered on or before the effective date of that AD.

This proposed AD therefore mandates the latest ALS revision as of the effective date of the AD for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before the effective date of the AD. Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design.

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

We reviewed Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, dated January 2017. This service information describes AWLs that include airworthiness limitation instructions (ALI) and critical design configuration control limitations (CDCCL) tasks related to fuel tank ignition prevention and the nitrogen generation 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**

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 revisions to certain operator maintenance documents to include new actions (e.g., inspections) and CDCCLs. Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this proposed AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before accomplishing the revision of the airplane maintenance or inspection program specified in this proposed AD do not need to be reworked in accordance with the latest revision of the CDCCLs specified by this proposed AD for incorporation. However, once the airplane maintenance or inspection program has been revised as required by this proposed AD, future maintenance actions on these components must be done in accordance with the CDCCLs specified by this proposed AD.

#### Differences With the Service Information

The “description” column of AWL No. 28-AWL-20 identifies certain operational tests. However, airplanes on which the actions specified in paragraph (g)(2)(ii) of AD 2011-20-07 have been done are not required to do the operational test for left center tank fuel boost pump relay R54 and right center tank fuel boost pump relay R55.

Paragraph (g) of this proposed AD would require operators to revise their maintenance or inspection program by incorporating, in part, AWL No. 28-AWL-05, “Wire Separation Requirements for New Wiring Installed in Proximity to Wiring That Goes Into the Fuel Tanks” in Boeing 737-600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001-9-04, dated January 2017. Paragraph (h) of this proposed AD would allow certain changes to be made to the requirements specified in AWL No. 28-AWL-05 as an option.

#### Clarification of the Service Information

The “applicability” column of AWL No. 28-AWL-19 identifies affected airplanes. For airplanes on which the actions specified in paragraph (s) of AD 2011-18-03 have been done, incorporation of Boeing Service Bulletin 737-28A1206 is not required. Therefore, those airplanes are not affected by AWL No. 28-AWL-19 and are not required to do the functional test.

The “applicability” column of AWL No. 28-AWL-23 identifies affected airplanes. For airplanes on which the actions specified in paragraph (s) of AD 2011-18-03 have been done, incorporation of Boeing Service Bulletin 737-28A1248 is not required. Therefore, those airplanes are not affected by AWL No. 28-AWL-23 and are not required to do the functional test.

#### Alternative Methods of Compliance (AMOC) Previously Approved for Compliance With AD 2008-10-10 R1

The FAA has previously issued AMOC approvals for compliance with paragraph (g)(3) of AD 2008-10-10 R1 to allow operators to incorporate alternative versions of AWL No. 28-AWL-05. AWL No. 28-AWL-05 includes the requirements for new wiring introduced by any alterations or changes to the type design, including STC modifications, in proximity to wiring that penetrates the fuel tank wall. Certain STCs that introduced new wiring near the fuel quantity indicating system (FQIS) wiring utilized design features that were different from the critical design features for fuel tank ignition prevention specified in the AD-mandated version of AWL No. 28-AWL-05. For those STCs, we have approved alternative versions of AWL No. 28-AWL-05 that specified critical design features associated with STC

modifications. We have determined that certain critical design features specified in the AMOC-approved versions of AWL No. 28-AWL-05 are not acceptable to meet the intent of this AWL. Therefore, this proposed AD does not allow credit for AMOCs previously approved under AD 2008-10-10 R1. However, based on our assessment of critical design features, we have provided an optional action under paragraph (h) of this proposed AD to allow certain changes to be made to the requirements specified in AWL No. 28-AWL-05. Under this optional action, certain critical design features we have previously approved and consider to be acceptable can be specified in AWL No. 28-AWL-05.

The requirements for new wiring versus existing wiring are specified in AWL No. 28-AWL-05. Based on these requirements, any STC modifications that are installed after the incorporation of AWL No. 28-AWL-05 (version required by paragraph (g) of this AD) must comply with AWL No. 28-AWL-05, including any mandatory rework, or the operator must request approval of an AMOC according to paragraph (k) of this proposed AD. Any STC modifications that are installed prior to the incorporation of AWL No. 28-AWL-05 (version required by paragraph (g) of this AD) are not required to be reworked for compliance with the new wiring requirements of AWL No. 28-AWL-05, except that future repair and replacement of existing wiring must follow AWL No. 28-AWL-05.

#### Costs of Compliance

We estimate that this proposed AD affects 1,417 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 |
|-------------------------------------------------|------------------------------------------|------------|------------------|------------------------|
| Revising the maintenance or inspection program. | 1 work-hour × \$85 per hour = \$85 ..... | \$0        | \$85             | \$120,445              |

#### 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–2017–0814; Product Identifier 2017–NM–066–AD.

#### (a) Comments Due Date

We must receive comments by November 16, 2017.

#### (b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) through (b)(5) of this AD.

- (1) AD 2008–06–03, Amendment 39–15415 (73 FR 13081, March 12, 2008) (“AD 2008–06–03”).
- (2) AD 2008–10–10 R1, Amendment 39–16164 (75 FR 1529, January 12, 2010) (“AD 2008–10–10 R1”).

- (3) AD 2008–17–15, Amendment 39–15653 (73 FR 50714, August 28, 2008) (“AD 2008–17–15”).

- (4) AD 2011–18–03, Amendment 39–16785 (76 FR 53317, August 26, 2011) (“AD 2011–18–03”).

- (5) AD 2013–15–17, Amendment 39–17533 (78 FR 52838, August 27, 2013) (“AD 2013–15–17”).

#### (c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, with an original standard airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD.

#### (d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

#### (e) Unsafe Condition

This AD was prompted by significant changes made to airworthiness limitations (AWL) related to fuel tank ignition prevention and the nitrogen generation system. We are issuing this AD to prevent the development of an ignition source inside the fuel tanks and also to prevent increasing the flammability exposure of the center fuel tank, which could lead to fuel tank explosion and consequent loss of the airplane.

#### (f) Compliance

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

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

Within 60 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information in Section A, including Subsections A.1, A.2, and A.3, of Boeing 737–600/700/700C/800/900/900ER Special Compliance Items/Airworthiness Limitations, D626A001–9–04, dated January 2017; except as provided by paragraph (h) of this AD. The initial compliance times for the airworthiness limitation instructions (ALI) tasks are within the applicable compliance times specified in paragraphs (g)(1) through (g)(11) of this AD:

- (1) For AWL No. 28–AWL–01, “External Wires Over Center Fuel Tank”: Within 120 months after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–01, whichever is later.
- (2) For AWL No. 28–AWL–03, “Fuel Quantity Indicating System (FQIS)—Out Tank Wiring Lightning Shield to Ground Termination”: Within 120 months after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–03, whichever is later.

- (3) For AWL No. 28–AWL–19, “Center Tank Fuel Boost Pump Automatic Shutoff System”: Within 12 months after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1206, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–19, whichever is latest. This AWL does not apply to airplanes that have complied with paragraph (s) of AD 2011–18–03.

- (4) For AWL No. 28–AWL–20, “Over-Current and Arcing Protection Electrical Design Features Operation—Boost Pump Ground Fault Interrupter (GFI)”: Within 12 months after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1201, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–20, whichever is latest. For airplanes that have complied with paragraph (g)(2)(ii) of AD 2011–20–07, the operational test for left center tank fuel boost pump relay R54 and right center tank fuel boost pump relay R55 does not apply.

- (5) For AWL No. 28–AWL–23, “Center Tank Fuel Boost Pump Power Failed On Protection System”: Within 12 months after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1248, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–23, whichever is latest. This AWL does not apply to airplanes that have complied with paragraph (s) of AD 2011–18–03.

- (6) For AWL No. 28–AWL–24, “Spar Valve Motor Operated Valve (MOV) Actuator—Lightning and Fault Current Protection Electrical Bond”: Within 72 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1207, or within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–24, whichever is later.

- (7) For AWL No. 28–AWL–29, “Full Cushion Clamps and Teflon Sleeving (If Installed) Installed on Out-of-Tank Wire Bundles Installed on Brackets that are Mounted Directly on the Fuel Tanks”: For airplanes having line numbers (L/N) 1 through 1754 inclusive, within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–57A1279. For airplanes having L/N 1755 and on, within 120 months after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 24 months after the effective date of this AD, whichever is later.

- (8) For AWL No. 47–AWL–04, “Nitrogen Generation System—Thermal Switch”: Within 22,500 flight hours after the date of

issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, within 22,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737-47-1003, or within 22,500 flight hours after the most recent inspection was performed as specified in AWL No. 47-AWL-04, whichever is latest.

(9) For AWL No. 47-AWL-06, "Nitrogen Generation System (NGS)—Cross Vent Check Valve": Within 13,000 flight hours after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, within 13,000 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737-47-1003, or within 13,000 flight hours after the most recent inspection was performed as specified in AWL No. 47-AWL-06, whichever is latest.

(10) For AWL No. 47-AWL-07, "Nitrogen Generation System (NGS)—Nitrogen Enriched Air (NEA) Distribution Ducting Integrity": Within 6,500 flight hours after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, within 6,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737-47-1003, or within 6,500 flight hours after the most recent inspection was performed as specified in AWL No. 47-AWL-07, whichever is latest.

(11) For AWL No. 28-AWL-101, "Engine Fuel Suction Feed Operational Test": Within 7,500 flight hours or 36 months, whichever occurs first, after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 7,500 flight hours or 36 months, whichever occurs first, after the most recent inspection was performed as specified in AWL No. 28-AWL-101; whichever is later.

#### (h) Exceptions to Service Information

As an option, when accomplishing the actions required by paragraph (g) of this AD, the changes specified in paragraphs (h)(1) and (h)(2) of this AD can be made to AWL No. 28-AWL-05.

(1) Where AWL No. 28-AWL-05 identifies wire types BMS 13-48, BMS 13-58, and BMS 13-60, add the following acceptable wire types: MIL-W-22759/16, MIL-W-22759/32, MIL-W-22759/34, MIL-W-22759/41, MIL-W-22759/86, MIL-W-22759/87, and MIL-W-22759/92; and MIL-C-27500 cables constructed from these wire types.

(2) Where AWL No. 28-AWL-05 identifies TFE-2X Standard wall for wire sleeving, add the following acceptable sleeving materials: Roundit 2000NX and Varglas Type HO, HP, or HM.

#### (i) No Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs)

After the maintenance or inspection program, as applicable, has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections), intervals, and CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of

compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

#### (j) Terminating Actions

Accomplishment of the revision required by paragraph (g) of this AD terminates the requirements specified in paragraphs (j)(1) through (j)(5) of this AD for that airplane:

(1) The revision required by paragraphs (h) and (h)(1) of AD 2008-06-03.

(2) All requirements of AD 2008-10-10 R1.

(3) The revision required by paragraph (g) of AD 2008-17-15.

(4) The revision required by paragraph (k) of AD 2011-18-03; and

(5) All requirements of AD 2013-15-17.

#### (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.

#### (l) Related Information

(1) For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6499; fax: 425-917-6590; email: takahisa.kobayashi@faa.gov.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Standards Branch, 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 September 14, 2017.

**Jeffrey E. Duven,**

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

[FR Doc. 2017-20560 Filed 9-29-17; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

**[Docket No. FAA-2017-0822; Airspace Docket No. 17-AEA-10]**

#### Proposed Revocation of Class E Airspace; Centerville, MD

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

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

**SUMMARY:** This action proposes to remove Class E airspace extending upward from 700 feet above the surface at Centerville, MD. Because the Maryland State Police Trooper 6 Heliport has moved, controlled airspace is no longer required at this location. Another rulemaking will be forthcoming establishing controlled airspace at the heliport's new location.

**DATES:** Comments must be received on or before November 16, 2017.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor, Rm. W12-140, Washington, DC 20590; Telephone: 1-800-647-5527, or (202) 366-9826. You must identify the Docket No. FAA-2017-0822; Airspace Docket No. 17-AEA-10, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For

information on the availability of FAA Order 7400.11B at NARA, call (202) 741-6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-6364.

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would remove Class E airspace extending upward from 700 feet above the surface at Maryland State Police Trooper 6 Heliport, Centerville, MD, due to the closing of the heliport.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2017-0822; Airspace Docket No. 17-AEA-10) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those

comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2014-0822; Airspace Docket No. 17-AEA-10." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### **Availability of NPRMs**

An electronic copy of this document may be downloaded from and comments submitted through <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/airports-airtraffic/air-traffic/publications/airspace\\_amendments/](http://www.faa.gov/airports-airtraffic/air-traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

##### **Availability and Summary of Documents for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

##### **The Proposal**

The FAA is considering an amendment to title 14, Code of Federal Regulations (14 CFR) part 71 to remove Class E airspace extending upward from 700 feet above the surface at Maryland State Police Trooper 6 Heliport, Centerville, MD. The heliport has moved to a new location. Therefore, the

airspace is no longer necessary at this site.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

##### **Regulatory Notices and Analyses**

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

##### **Environmental Review**

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

##### **Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

##### **The Proposed Amendment**

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

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

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

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

##### **§ 71.1 [Amended]**

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective

September 15, 2017, is amended as follows:

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

\* \* \* \* \*

#### AEA MD E5 Centerville, MD [Removed]

Issued in College Park, Georgia, on September 22, 2017.

**Ryan W. Almasy,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2017-20958 Filed 9-29-17; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2017-0818; Airspace Docket No. 17-AGL-19]

#### Proposed Revocation of Class E Airspace; Pulaski, WI

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

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

**SUMMARY:** This action proposes to remove Class E airspace extending upward from 700 feet above the surface at Carter Airport, Pulaski, WI. The FAA is proposing this action due to the cancellation of the instrument procedures into the airport, resulting in the airport no longer qualifying for controlled airspace.

**DATES:** Comments must be received on or before November 16, 2017.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9826, or (800) 647-5527. You must identify FAA Docket No. FAA-2017-0818; Airspace Docket No. 17-AGL-19, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy

Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741-6030, or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

#### FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would remove Class E airspace extending upward from 700 feet above the surface at Carter Airport, Pulaski, WI.

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket No. FAA-2017-0818/Airspace Docket No. 17-AGL-19." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

##### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

##### The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 by removing the Class E airspace area extending upward from 700 feet above the surface within a 6.9-mile radius of Carter Airport, Pulaski, WI.

This action is necessary due to the cancellation of the instrument procedures at Carter Airport. The removal of these procedures would

result in the airport no longer qualifying for controlled airspace.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### Regulatory Notices and Analyses

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

### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting

Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

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

\* \* \* \* \*

#### AGL WI E5 Pulaski, WI [Removed]

Issued in Fort Worth, Texas, on September 25, 2017.

**Wayne Eckenrode,**

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

[FR Doc. 2017–20959 Filed 9–29–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

#### 14 CFR Chapters I, II, and III

#### 23 CFR Chapters I, II, and III

#### 46 CFR Chapter II

#### 48 CFR Chapter 12

#### 49 CFR Chapters I, II, III, V, VI, VII, VIII, X, and XI

[Docket No. DOT–OST–2017–0069]

### Notification of Regulatory Review

**AGENCY:** Office of the Secretary of Transportation (OST); U.S. Department of Transportation (DOT).

**ACTION:** Regulatory review.

**SUMMARY:** The U.S. Department of Transportation (Department or DOT) is reviewing its existing regulations and other agency actions to evaluate their continued necessity, determine whether they are crafted effectively to solve current problems, and evaluate whether they potentially burden the development or use of domestically produced energy resources. As part of these reviews, the Department invites the public to provide input on existing rules and other agency actions that are good candidates for repeal, replacement, suspension, or modification. The Department may also hold a public meeting to discuss and consider comments from members of the public. **DATES:** Comments should be received on or before November 1, 2017. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT–OST–2017–0069 by any of the following methods:

• **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

• **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Room W12–140, Washington, DC 20590–0001.

• **Hand Delivery or Courier:** The Docket Management Facility is located on the West Building, Ground Floor, of the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Room W12–140, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• **Fax:** 202–493–2251.

**Instructions:** You must include the agency name and the Docket Number DOT–OST–2017–0069 at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL–14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Moss, Assistant General Counsel for Regulation, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–4723 (phone), [jonathan.moss@dot.gov](mailto:jonathan.moss@dot.gov) (email) or Barbara McCann, Director, Office of Policy Development, Strategic Planning and Performance, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–8016 (phone), [barbara.mccann@dot.gov](mailto:barbara.mccann@dot.gov).

### SUPPLEMENTARY INFORMATION:

#### DOT Responsibilities for Regulations and Transportation Infrastructure

The Department carries out its responsibilities through the Office of the

Secretary (OST) and the following operating administrations (OAs): Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); Federal Transit Administration (FTA); Maritime Administration (MARAD); National Highway Traffic Safety Administration (NHTSA); Pipeline and Hazardous Materials Safety Administration; (PHMSA); and St. Lawrence Seaway Development Corporation (SLSDC).

DOT has statutory responsibility for a wide range of regulations. For example, DOT regulates safety in the aviation, motor carrier, railroad, motor vehicle, commercial space, transit, and pipeline transportation areas. The Department also regulates aviation consumer and economic issues, and provides financial assistance and writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, and motor transportation and vehicle safety. Finally, DOT has responsibility for developing policies that implement a wide range of regulations that govern programs such as acquisition and grants management, access for people with disabilities, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, security, and the use of aircraft and vehicles.

#### **Review of Regulations and Other Agency Actions**

Improvement of regulations is a continuous focus for the Department. There should be no more regulations than necessary, and those regulations should be straightforward, clear, and designed to minimize burdens. Further, DOT regulations and other agency actions should not unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources. Once issued, regulations and other agency actions should be reviewed periodically and revised to ensure that they continue to meet the needs for which they originally were designed, remain cost-effective and cost-justified. Further, regulations and other agency actions should promote clean and safe development of our Nation's vast energy resources, while avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.

Accordingly, DOT regularly makes a conscientious effort to review its rules in accordance with the Department's

1979 Regulatory Policies and Procedures (44 FR 11034, Feb. 26, 1979), Executive Order (E.O.) 12866, E.O. 13563, and section 610 of the Regulatory Flexibility Act. The Department follows a repeating 10-year plan for the review of existing regulations, which is set forth in the Department's semi-annual Regulatory Agenda published in the **Federal Register** (see Appendix D to "Department Regulatory Agenda; Semiannual Summary" most recently issued on July 20, 2017). The reviews conducted under this plan comply with section 610 of the Regulatory Flexibility Act. OST and OAs other than the Saint Lawrence Seaway Development Corporation (SLSDC) have also elected to use this repeating 10-year plan to comply with the review requirements of the Department's Regulatory Policies and Procedures and E.O. 12866. SLSDC does not follow this practice because the agency is responsible for only a small number of regulations that were reviewed in 2009. Generally, the OAs have divided their rules into 10 different groups and analyze one group each year, then start over again. The Department regularly invites public participation in those reviews and seeks general suggestions on rules that it should revise or revoke. In the fall Regulatory Agenda, the Department publishes information on the results of the examinations completed during the previous year.

#### **Public Participation and Request for Comments**

Through three new E.O.s, President Trump directed agencies to further scrutinize their regulations and other agency actions. On January 30, 2017, President Trump signed E.O. 13771, Reducing Regulation and Controlling Regulatory Costs. Under Section 2(a) of the E.O., unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it must identify at least two existing regulations to be repealed.

On February 24, 2017, President Trump signed E.O. 13777, Enforcing the Regulatory Reform Agenda. Under this Executive Order, each agency must establish a Regulatory Reform Task Force (RRTF) to evaluate existing regulations, and make recommendations for their repeal, replacement, or modification. As part of this process, the Department is directed to seek input/assistance from entities significantly affected by its regulations.

On March 28, 2017, President Trump signed E.O. 13783, Promoting Energy Independence and Economic Growth.

Section 2 of E.O. 13783 requires agencies to review all existing regulations, orders, guidance documents, policies, and other similar agency actions that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. This review will result in a final report that describes the result of the required review and includes specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency actions that burden domestic energy production. E.O. 13783 also requires that, for any specific recommendations made in the final report, the agency suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding those actions, as appropriate and consistent with law.

To respond to the President's direction in E.O. 13771, E.O. 13777, and E.O. 13783, as well as other legal authorities, the Department seeks written input from the public on existing regulations and other agency actions that are good candidates for repeal, replacement, or modification. In addition to accepting written comments, the Department may hold a public meeting. In recognition of the fact that safety is the Department's highest priority, the Department seeks comments on those existing regulations and other agency actions that may be repealed, replaced, or modified without compromising safety. The public is encouraged to identify regulations that (a) eliminate jobs or inhibit job creation; (b) are outdated, unnecessary, or ineffective; (c) impose costs that exceed benefits; (d) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (e) could be revised to use performance standards in lieu of design standards, or (f) potentially burden the development or use of domestically produced energy resources. The Department welcomes public comment on any and all of its regulations and other agency actions, although rules that impose significant costs on the public may provide greater opportunity for identifying and alleviating unnecessary burdens. For convenience, a list of economically significant rulemakings issued over the past several years is included in Appendix A.

When identifying regulations and other agency actions appropriate for suspension, repeal, replacement, or modification, the public is encouraged to consider whether there is an opportunity to: (1) Simplify or clarify language in a regulation; (2) eliminate

overlapping and duplicative regulations, including those that require repetitive filings for conducting business with the Department; (3) eliminate conflicts and inconsistencies in the Department's regulations and those of its agencies; (4) eliminate conflicts and inconsistencies with the rules of other Federal agencies or state, local, or tribal governments; (5) determine if matters in an existing regulation could be better handled fully by the states without Federal regulations; (6) revise regulations in which technology, economic conditions or other factors have changed in the area affected by the regulation; (7) reconsider regulations that were based on scientific or other information that has been discredited or superseded; (8) reconsider the burdens imposed on those directly or indirectly affected by the regulation and, specifically, those that are costly when compared to the benefit provided; (9) reconsider burdens imposed on small entities; (10) foster innovation by revising regulations to include performance standards for regulatory compliance; and (11) reduce burdens by incorporating international or industry consensus standards into regulations.

#### *Content of Comments*

The Department will review all comments submitted timely to the docket associated with this regulatory review, DOT-OST-2017-0069. To maximize the usefulness of comments, the Department encourages commenters to provide the following information:

1. *Specific reference.* A specific reference to the policy statement, guidance document, regulation, or other agency action that imposes the burden that the comment discusses. This should be a citation to the Code of Federal Regulations, a guidance document number, or an Internet link. A specific reference will assist the Department in identifying the requirement, the original source of the requirement, and relevant documentation that may describe the history and effects of the requirement.

2. *Description of burden.* A description of the burden that the identified policy statement, guidance document, regulation, or other agency action imposes. A comment that describes how the policy statement, guidance document, regulation, or other agency action is burdensome is more useful than a comment that merely asserts that it is burdensome. Comments that reflect experience with the requirement and provide data describing that experience are more credible than comments that are not tied to direct experience. Verifiable,

quantifiable data describing burdens are more useful than anecdotal descriptions.

3. *Description of less burdensome alternatives.* If the commenter believes that the objective that motivated the policy statement, guidance document, regulation, or other agency action may be achieved using a less burdensome alternative, the commenter should describe that alternative in detail. Likewise, if the commenter believes that there is not a less burdensome alternative or there is not a legitimate objective motivating the requirement, then that should be explained in the comment.

4. *Examples of affected entities or projects.* Examples of entities that are, have been, or will be negatively affected by the identified policy statement, guidance document, regulation, or other agency action and examples of entities that will benefit if the requirement is removed or revised. A comment listing specific entities is more useful because it will assist the Department in investigating the burden and how it may be most effectively addressed.

#### *Scope of Comments*

The Department is interested in comments on any DOT regulation or other agency action that imposes unjustifiable burdens on regulated entities or on the use or production of domestic energy resources.

Issued on: September 26, 2017.

**James C. Owens,**

*Acting General Counsel.*

#### **Appendix A—DOT Economically Significant Rulemakings**

1. The FRA's final rule on Electronically Controlled Pneumatic Brake Systems (RIN: 2130-AC03) (published on October 16, 2008, at 73 FR 61511) (annualized costs of \$138 million);

2. The PHMSA's final rule on Pipeline Safety: Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission Pipelines (RIN: 2137-AE25) (published on October 17, 2008, at 73 FR 62147) (annualized costs of \$95 million);

3. The NHTSA's final rule on Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011 (RIN: 2127-AK29) (published on March 30, 2009, at 74 FR 14195) (annualized costs of \$1.46 billion);

4. The NHTSA's final rule on the Federal Motor Vehicle Safety Standards; Roof Crush Resistance; Phase-In Reporting Requirements (RIN: 2127-AG51) (published on May 12, 2009, at 74 FR 22347) (annualized costs of \$0.8–1.3 billion);

5. The PHMSA's final rule on Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines (RIN: 2137-AE15) (published on December 4, 2009, at 74 FR 63905) (annualized costs of \$95 million);

6. The NHTSA's final rule on Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards (RIN: 2127-AK50) (published on May 7, 2010, at 75 FR 25323) (annualized costs of approximately \$10 billion);

7. The FAA's final rule on Automatic Dependent Surveillance—Broadcast Equipage Mandate to Support Air Traffic Control Service (RIN: 2120-AI92) (published May 28, 2010, at 75 FR 30159) (annualized costs of \$216 million);

8. The FHWA's final rule on Real-Time System Management Information Program (RIN: 2125-AF19) (published on November 9, 2010, at 75 FR 68418) (annualized costs of \$135 million);

9. The NHTSA's final rule on Federal Motor Vehicle Safety Standards, Ejection Mitigation; Phase-In Reporting Requirements; Incorporation by Reference (RIN: 2127-AK23) (published on January 19, 2011, at 76 FR 3211) (annualized costs of \$2.3 billion);

10. The FRA's final rule on Positive Train Control Systems (RRR) (RIN: 2130-AC27) (published on May 14, 2012, at 77 FR 28285) (annualized costs of \$2 million);

11. The NHTSA's final rule on 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards (RIN: 2127-AK79) (published on October 15, 2012, at 77 FR 62623) (annualized costs of \$2.2–3.6 billion);

12. The FTA's final rule on Major Capital Investment Projects—New/Small Starts (RIN: 2132-AB02) (published on January 9, 2013, at 78 FR 1991) (annualized costs of \$300,000);

13. The NHTSA's final rule on Federal Motor Vehicle Safety Standards; Occupant Crash Protection (RIN: 2127-AK56) (published on November 25, 2013, at 78 FR 70415) (annualized costs of \$6 million);

14. The FMCSA's final rule on Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report (DVIR) (RIN: 2126-AB46) (published on December 18, 2014, at 79 FR 75437) (annualized cost-savings of \$1.7 billion);

15. The NHTSA's final rule on Federal Motor Vehicle Safety Standards; Electronic Stability Control Systems for Heavy Vehicles (RIN: 2127-AK97) (published on June 23, 2015, at 80 FR 36049) (annualized costs of \$46 million);

16. The PHMSA's final rule on Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (RIN: 2137-AE91) (published on July 7, 2015, at 80 FR 26643) (annualized costs of \$234 million);

17. The FMCSA's final rule on Electronic Logging Devices and Hours of Service Supporting Documents (RIN: 2126-AB20) (published on December 16, 2015, at 80 FR 78291) (annualized costs of \$1.8 billion);

18. The NHTSA's final rule on Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (RIN: 2127-AL52) (published on October 25, 2016, at 81 FR 73478) (annualized costs of \$4 billion);

19. The FMCSA's final rule on Commercial Driver's License Drug and Alcohol Clearinghouse (RIN: 2126-AB18) (published

on December 5, 2016, at 81 FR 87686) (annualized costs of \$154 million); and

20. The FMCSA's final rule on Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators (RIN: 2126-AB66) (published on December 8, 2016, at 81 FR 88732) (annualized costs of \$368 million).

[FR Doc. 2017-21101 Filed 9-29-17; 8:45 am]

BILLING CODE 4910-9X-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 101

[Docket Nos. FDA-2012-N-1210 and FDA-2004-N-0258]

RIN 0910-ZA49

#### **Food Labeling: Revision of the Nutrition and Supplement Facts Labels and Serving Sizes of Foods That Can Reasonably Be Consumed at One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments; Proposed Extension of Compliance Dates**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA or we) is proposing to extend the compliance dates by approximately 1.5 years for the final rules providing updated nutrition information on the label of food, including dietary supplements; defining a single-serving container; requiring dual-column labeling for certain containers; updating, modifying, and establishing certain reference amounts customarily consumed (RACCs); and amending the label serving size for breath mints. The final rules appeared in the *Federal Register* of May 27, 2016. We are taking this action because, after careful consideration, we have tentatively determined that additional time would help ensure that all manufacturers covered by the final rules have guidance from FDA to address, for example, certain technical questions we received after publication of the final rules, and that they are able to complete and print updated Nutrition Facts labels for their products before they are expected to be in compliance with the final rules.

**DATES:** Submit either electronic or written comments on the proposed rule by November 1, 2017.

**ADDRESSES:** You may submit comments on the extension of the compliance period as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 1, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of November 1, 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 Nos. FDA-2012-N-1210 and FDA-2004-N-0258 for "Food Labeling: Revision of the Nutrition and Supplement Facts Labels

and Serving Sizes of Foods That Can Reasonably Be Consumed at One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments; Extension of Compliance Date." 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." We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

**FOR FURTHER INFORMATION CONTACT:** Paula Trumbo, Center for Food Safety and Applied Nutrition (HFS-830), Food and Drug Administration, 5001 Campus

Dr., College Park, MD 20740, 240–402–2579.

## SUPPLEMENTARY INFORMATION:

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### I. Background

In the **Federal Register** of May 27, 2016 (81 FR 33742 and 81 FR 34000), we published two final rules entitled “Food Labeling: Revision of the Nutrition and Supplement Facts Labels” (the Nutrition Facts Label Final Rule) and “Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments” (the Serving Size Final Rule). The Nutrition Facts Label Final Rule revises the Nutrition Facts label by:

- Removing the declaration of “Calories from fat” because current science supports a view that the type of fat is more relevant than overall total fat intake in increased risk of chronic diseases;
- Requiring the declaration of the gram amount of “Added Sugars” in a serving of a product, establishing a Daily Reference Value (DRV), and requiring the percent Daily Value (DV) declaration for added sugars;
- Changing “Sugars” to “Total Sugars” and requiring that “Includes ‘X’ g Added Sugars” be indented and declared directly below “Total Sugars” on the label;
- Updating the list of vitamins and minerals of public health significance. For example, the Nutrition Facts Label Final Rule requires the declaration of vitamin D and potassium and permits, rather than requires, the declaration of vitamins A and C;
- Updating certain reference values used in the declaration of percent DVs of nutrients on the Nutrition Facts and Supplement Facts labels;
- Revising the format of the Nutrition Facts and Supplement Facts labels to increase the prominence of the term “Calories;”
- Removing the requirement for the footnote table listing the reference values for certain nutrients for 2,000 and 2,500 calorie diets; and
- Requiring the maintenance of records to support the declarations of

certain nutrients under specified circumstances.

The Serving Size Final Rule requires all containers, including containers of products with “large” RACCs (*i.e.*, products with RACCs of at least 100 grams (g) or 100 milliliters (mL)), containing less than 200 percent of the RACC to be labeled as a single-serving container. Except for when certain exceptions apply, the Serving Size Final Rule further requires that containers and units that contain at least 200 percent and up to and including 300 percent of the RACC be labeled with a column of nutrition information within the Nutrition Facts label that lists the quantitative amounts and percent DVs for the entire container, in addition to the required column listing the quantitative amounts and percent DVs for a serving that is less than the entire container (*i.e.*, the serving size derived from the RACC). The Serving Size Final Rule also updates, modifies, and establishes RACCs for certain foods and product categories.

### II. Description of the Proposed Rule

We are proposing to extend the compliance date for manufacturers with \$10 million or more in annual food sales in the final rules published on May 27, 2016, from July 26, 2018, to January 1, 2020, and the compliance date for manufacturers with less than \$10 million in annual food sales in the final rules published on May 27, 2016, from July 26, 2019, to January 1, 2021.

We emphasize that this proposed rule would only extend the compliance dates. Therefore, comments to this proposed rule should pertain to the extension of the compliance dates only. We are proposing to extend the compliance dates for the Nutrition Facts Label Final Rule and the Serving Size Final Rule, consistent with our authority in sections 403(q) and 701(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 343(q) and 371(a), respectively).

### III. Proposed Compliance Dates

This proposed rule would extend the compliance date for manufacturers with \$10 million or more in annual food sales in the final rules published on May 27, 2016, from July 26, 2018, to January 1, 2020, and the compliance date for manufacturers with less than \$10 million in annual food sales in the final rules published on May 27, 2016, from July 26, 2019, to January 1, 2021. We are taking this action because, after careful consideration, we have tentatively determined that additional time would help ensure that all manufacturers covered by the rules have guidance from

FDA to address, for example, certain technical questions we received after publication of the final rules (see Docket No. FDA–2016–D–4414 (pertaining to a draft guidance entitled “Questions and Answers on the Nutrition and Supplement Facts Labels Related to the Compliance Date, Added Sugars, and Declaration of Quantitative Amounts of Vitamins and Minerals: Guidance for Industry”)), and that they are able to complete and print updated Nutrition Facts labels for their products before they are expected to be in compliance with the rules. Companies and trade associations with members covered by the rules have informed us that they have significant concerns about their ability to update all their labels by the compliance dates due to issues regarding (among other things) the need for upgrades to labeling software, the need to obtain nutrition information from suppliers, the number of products that would need new labels, and a limited time for reformulation of products. Consequently, we are proposing to extend the compliance dates to provide more time to comply with the Nutrition Facts Label and the Serving Size Final Rules. We propose extending the compliance date by approximately 1.5 years for both categories of manufacturers as a means to balance the importance of ensuring that industry has sufficient time to comply with complex new requirements, and the importance of decreasing costs, against the importance of minimizing the transition period during which consumers will see both the old and the new versions of the label in the marketplace.

We are taking this action consistent with Executive Orders 13771 and 13563 and in response to the continued concern that companies and trade associations have shared with us regarding the time needed for implementation of the final rules and the need for FDA to provide further guidance to manufacturers subject to the final rules. Consistent with the policies set forth in these executive orders with respect to reducing burdens, reducing costs, maintaining flexibility, and improving effectiveness, we are therefore proposing to extend the compliance date for manufacturers with \$10 million or more in annual food sales to January 1, 2020, and the compliance date for manufacturers with less than \$10 million in annual food sales to January 1, 2021.

Our goal is to complete this rulemaking as quickly as possible. However, we are aware that firms are working under the current compliance dates to come into compliance. Pending

completion of this rulemaking, we intend to exercise enforcement discretion with respect to the current July 26, 2018, and July 26, 2019, compliance dates.

#### IV. Economic Analysis of Impacts

We have examined the impacts of this proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.” We believe that this proposed rule is a significant regulatory action as defined by Executive Order 12866.

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an Agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the Agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new

incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. This proposed rule is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule’s economic analysis.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities when “the agency publishes a general notice of proposed rulemaking” (5 U.S.C. 601(2)). We have analyzed the proposed rule under the Regulatory Flexibility Act and propose to certify that, because the proposed rule only would extend the compliance dates for the Nutrition Facts Label and Serving Size Final Rules, the proposed rule would not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$148 million, using the 2016 Implicit Price Deflator for the Gross Domestic Product. We have determined that the proposed rule would not result in any expenditure by industry in any year that meets or exceeds this amount.

The principal benefit of this proposed rule to extend the compliance dates is the reduction in the costs to industry of meeting the compliance dates of the Nutrition Facts Label Final Rule and the Serving Size Final Rule. This reduction in costs can be attributed to a reduction in the relabeling and reformulation costs of the Nutrition Facts Label and Serving Size Final Rules. We estimate that, at the mean, the present value of the benefits (*i.e.*, cost savings) of this proposed rule to extend the compliance dates over the next 20 years is \$1.0 billion using either a 3 percent or 7 percent discount rate (2016\$). This is illustrated in table 1. Extending the compliance dates by approximately 1.5 years would reduce the estimated benefits of the Nutrition Facts Label and Serving Size Final Rules because it would delay the realization by consumers of the full annual welfare gains of the Nutrition Facts Label and Serving Size Final Rules. More specifically, an extension of the compliance dates would delay the incorporation of the provisions of the Nutrition Facts Label and Serving Size Final Rules by food manufacturers into their products. We estimate that, at the mean, the present value of the forgone benefits of this proposed rule to extend the compliance dates over the next 20 years is \$0.9 billion using either a 3 percent or 7 percent discount rate (2016\$). This is also presented in table 1. We estimate that, at the mean, the present value of the net benefits (that is, cost savings minus forgone benefits) of this proposed rule to extend the compliance dates over the next 20 years is \$0.1 billion using either a 3 percent or 7 percent discount rate (2016\$). This is shown in table 1.

TABLE 1—SUMMARY OF THE COST SAVINGS TO INDUSTRY AND FOREGONE BENEFITS TO CONSUMERS OF THIS PROPOSED RULE TO EXTEND THE COMPLIANCE DATES

[In billions of 2016]

|                         | Discount rate<br>(percent) | Cost savings | Foregone<br>benefits | Net benefits<br>(cost<br>savings –<br>foregone<br>benefits) |
|-------------------------|----------------------------|--------------|----------------------|-------------------------------------------------------------|
| Present Value .....     | 3                          | \$1.0        | \$0.9                | \$0.1                                                       |
|                         | 7                          | 1.0          | 0.9                  | 0.1                                                         |
| Annualized Amount ..... | 3                          | 0.07         | 0.06                 | 0.01                                                        |
|                         | 7                          | 0.09         | 0.08                 | 0.01                                                        |

**Notes:** Cost savings to industry, foregone benefits to consumers, and net benefits reflect mean estimates. This proposed rule to extend the compliance dates would extend the compliance dates of the Nutrition Facts Label and Serving Size Final Rules by approximately 1.5 years. Annualized Amount = Amount/Annualizing Factor. 3 percent annualizing factor = 14.88. 7 percent annualizing factor = 10.59. The annualizing factors are calculated by summing the inverse of 1 plus the discount rate to the power of the year ( $t = 1$  through  $t = 20$ ).

For purposes of this analysis, we use the same methodology for estimating costs and benefits that we used in the

original Regulatory Impact Analysis for the Final Rules. We previously acknowledged potential shortcomings

with that approach (see 2016 Regulatory Impact Analysis at 79 n.34) but have not received comments about ways to

improve that analysis. We thus follow the same basic approach here.

The full analysis of economic impacts is available in the docket for this proposed rule (Ref. 1) and at <https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses>.

## V. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(k) 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.

## VI. Paperwork Reduction Act of 1995

This proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## VII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive Order requires Agencies to “construe \* \* \* a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.” Section 403A of the FD&C Act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a) of the FD&C Act provides that: “\* \* \* no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—(4) any requirement for nutrition labeling of food that is not identical to the requirement of section 403(q) \* \* \*.” The express preemption provision of section 403A(a) of the FD&C Act does not preempt any State or local requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food or component of the food (section 6(c)(2) of the Nutrition Labeling and Education Act of 1990, Pub. L. 101–535, 104 Stat. 2353, 2364 (1990)). If this proposed rule is made final, the final rule would create requirements that fall within the scope of section 403A(a) of the FD&C Act.

## VIII. References

The following reference is on display in the Dockets Management Staff (see

**ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at <https://www.regulations.gov>. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. United States Department of Health and Human Services, United States Food and Drug Administration. Preliminary Regulatory Impact Analysis, Preliminary Regulatory Flexibility Analysis for Proposed Rule on “Food Labeling: Revision of the Nutrition and Supplement Facts Labels and Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments; Extension of Compliance Dates.” September 2017. Available from <http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses>.

Dated: September 26, 2017.

**Anna K. Abram,**

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

[FR Doc. 2017–21019 Filed 9–29–17; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

#### RIN 2900–AQ06

### Authority of Health Care Providers To Practice Telehealth

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its medical regulations by standardizing the delivery of care by VA health care providers through telehealth. This rule would ensure that VA health care providers provide the same level of care to all beneficiaries, irrespective of the State or location in a State of the VA health care provider or the beneficiary. This proposed rule would achieve important Federal interests by increasing the availability of mental health, specialty, and general clinical care for all beneficiaries.

**DATES:** Comments must be received on or before November 1, 2017.

**ADDRESSES:** Written comments may be submitted through <http://www.Regulations.gov> by mail or hand-

delivery to: Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free telephone number.) Comments should indicate that they are submitted in response to “RIN 2900–AQ06–Authority of Health Care Providers to Practice Telehealth.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free telephone number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Kevin Galpin, MD, Executive Director Telehealth Services, Veterans Health Administration Office of Connected Care, 810 Vermont Avenue NW., Washington, DC 20420. (404) 771–8794. (This is not a toll-free number.) [Kevin.Galpin@va.gov](mailto:Kevin.Galpin@va.gov).

**SUPPLEMENTARY INFORMATION:** Section 7301 of title 38, United States Code (U.S.C.), establishes the general functions of the Veterans Health Administration (VHA) within VA, and establishes that its primary function is to “provide a complete medical and hospital service for the medical care and treatment of veterans, as provided in this title and in regulations prescribed by the Secretary [of Veterans Affairs (Secretary)] pursuant to this title.” 38 U.S.C. 7301(b). In carrying out this function, VHA must ensure that patient care is appropriate and safe and its health care providers meet or exceed generally accepted professional standards for patient care. In addition, because VA is a national health care provider, VHA must ensure that beneficiaries receive the same high level of care and access to care no matter where, in a State, a beneficiary or health care provider is located at the time the health care is provided.

The Secretary is responsible for the proper execution and administration of all laws administered by the Department and for the control, direction, and management of the Department, including agency personnel and management matters. See 38 U.S.C. 303. To this end, Congress authorized the Secretary “to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department and are

consistent with those laws.” 38 U.S.C. 501(a). The Under Secretary for Health is directly responsible to the Secretary for the operation of VHA. 38 U.S.C. 305(b). Unless specifically otherwise provided, the Under Secretary for Health, as the head of VHA, is authorized to “prescribe all regulations necessary to the administration of the Veterans Health Administration,” subject to the approval of the Secretary. 38 U.S.C. 7304.

To allow VA to carry out its medical care mission, Congress also established a comprehensive personnel system for certain VA health care providers, independent of the civil service rules. See 38 U.S.C. chapters 73–74. Congress granted the Secretary express statutory authority to establish the qualifications for VA’s health care providers, determine the hours and conditions of employment, take disciplinary action against employees, and otherwise regulate the professional activities of those individuals. 38 U.S.C. 7401–7464.

To be eligible for appointment as a VA employee in a health care position covered by section 7402(b) of title 38, U.S.C. (other than a medical facility Director appointed under section 7402(b)(4)), a person must, among other requirements, be licensed, registered, or certified to practice his or her profession in a State. The standards prescribed in section 7402(b) establish only the basic qualifications necessary “[t]o be eligible for appointment” and do not limit the Secretary or Under Secretary for Health from establishing other qualifications for appointment, or additional rules governing such personnel. In particular, section 7403(a)(1) provides that appointments under chapter 74 “may be made only after qualifications have been established in accordance with regulations prescribed by the Secretary, without regard to civil-service requirements.” Such authority is necessary to ensure the viability of our national health care system, which is designed to ensure the well-being of those who have “borne the battle.”

Just as it is critical to ensure there are qualified health care providers on-site at all VA medical facilities, VA must ensure that all beneficiaries, specifically including beneficiaries in remote, rural, or medically underserved areas, have the greatest possible access to mental health care, specialty care, and general clinical care. Thus, VA has developed a telehealth program as a modern, beneficiary- and family-centered health care delivery model that leverages information and telecommunication technologies to connect beneficiaries with health care providers, irrespective of the State or location within a State

where the health care provider or the beneficiary is physically located at the time the health care is provided. Telehealth enhances VA’s capacity to deliver essential and critical health care services to beneficiaries located in areas where health care providers may be unavailable or to beneficiaries who may be unable to travel to the nearest VA medical facility for care because of their medical conditions. Telehealth increases the accessibility of VA health care, bringing VA medical services to locations convenient for beneficiaries, including clinics in remote communities and beneficiaries’ homes. By providing health care services by telehealth from one State to a beneficiary located in another State or within the same State, whether that beneficiary is located at a VA medical facility or in his or her own home, VA can use its limited health care resources most efficiently.

Congress has required other Departments and agencies to conduct telehealth programs. *See, e.g.*, Public Law 114–328, sec. 718(a)(1) (“the Secretary of Defense shall incorporate, throughout the direct care and purchased care components of the military health system, the use of telehealth services”). While VA does not have an analogous mandate, several statutes confirm that Congress intends for VA to operate a national health care system for beneficiaries including through telehealth. Congress has required the Secretary “to carry out an initiative of teleconsultation for the provision of remote mental health and traumatic brain injury assessments in facilities of the Department that are not otherwise able to provide such assessments without contracting with third-party providers or reimbursing providers through a fee basis system.” 38 U.S.C. 1709A(a)(1). Congress has authorized the Secretary to “waive the imposition or collection of copayments for telehealth and telemedicine visits of veterans under the laws administered by the Secretary.” 38 U.S.C. 1722B. And, as recently as December 2016, Congress required VA to initiate a pilot program to provide veterans a self-scheduling, online appointment system; this pilot program must “support appointments for the provision of health care regardless of whether such care is provided in person or through telehealth services.” Public Law 114–286, sec. 3(a)(2).

As noted above, VA only has legal authority to hire health care providers who are licensed, registered, or certified in a State. To continue practicing in VA, providers must maintain those credentials in accordance with their

health care specialty as stated in 38 U.S.C. 7402(b).

In an effort to furnish care to all beneficiaries and use its resources most efficiently, VA needs to operate its telehealth program with health care providers who will provide services via telehealth to beneficiaries in States in which they are not licensed, registered, certified, or located, or where they are not authorized to furnish care using telehealth. Currently, doing so may jeopardize these providers’ credentials, including fines and imprisonment for unauthorized practice of medicine, because of conflicts between VA’s need to provide telehealth across the VA system and some States’ laws or licensure, registration, certification, or other requirements that restrict or limit the practice of telehealth. A number of States have already enacted legislation or regulations that restrict the practice of interstate telehealth, as discussed below in the Administrative Procedure Act section.

To protect VA health care providers from potential adverse actions by States, many VA medical centers (VAMC) are currently not expanding some critical telehealth services if the health care service is provided outside Federal property (such as when the beneficiary is receiving telehealth care in his or her home or when the VA provider is delivering telehealth care from his or her home) or across State lines. In addition, many individual VA health care providers refuse to practice telehealth because of concerns over States taking action against the health care provider’s State license, State laws, or the shifting regulatory landscape that creates legal ambiguity and unacceptable State licensing risk. The current disparities between VA health care practice in telehealth and State laws have effectively stopped or inhibited VA’s expansion of telehealth services to certain locations, thereby reducing the availability and accessibility of care for beneficiaries.

This proposed rulemaking would clarify that VA health care providers may exercise their authority to provide care through the use of telehealth, notwithstanding any State laws, rules, or licensure, registration, or certification requirements to the contrary. In so doing, VA would exercise Federal preemption of State licensure, registration, and certification laws, rules, regulations, or requirements to the extent such State laws conflict with the ability of VA health care providers to engage in the practice of telehealth while acting within the scope of their VA employment. Preemption would be the minimum necessary action for VA to

furnish effectively telehealth services because it would be impractical for VA to lobby each State to remove its restrictions that impair VA's ability to furnish telehealth services to beneficiaries and then wait for the State to implement appropriate changes. That process would delay the growth of telehealth services in VA, thereby delaying delivery of health care to beneficiaries. It would be costly and time-consuming for VA and would not guarantee a successful result. We note that, apart from the limited action of authorizing telehealth across and within jurisdictions in furtherance of important Federal interests, this rulemaking would not expand the scope of practice for VA health care providers beyond what is statutorily defined in the laws and practice acts of the health care provider's state of licensure. That is, this rulemaking does not affect VA's existing requirement that all VA health care providers adhere to restrictions imposed by their State license, registration, or certification regarding the professional's authority to prescribe and administer controlled substances.

As VA's telehealth program expands and successfully provides increased access to high quality health care to all beneficiaries, it is increasingly important for VA health care providers to be able to practice telehealth across State lines and within states free of restrictions imposed by State law or regulations, including conditions attached to their State licenses. For fiscal year (FY) 2016, VA health care providers had 2.17 million telehealth episodes of health care (meaning a clinical encounter or a period of time in which care was monitored), which served over 702,000 veterans (approximately 12 percent of the total patient population), with 45 percent of those veterans living in rural communities. By increasing VA's capabilities to provide telehealth services, VA would be able to expand these services.

Eliminating veteran suicide and providing access to mental health care is VA's number one clinical priority, and this proposed rulemaking would improve VA's ability to reach its most vulnerable beneficiaries. Some mental health patients suffer from conditions, such as anxiety and agoraphobia, which make it incredibly difficult to leave their houses to receive necessary mental and general health care. Furthermore, some of our beneficiaries live in areas that are Federally designated as mental health provider shortage areas. Therefore, even if beneficiaries feel comfortable leaving their home to seek care, there may not be sufficient mental health care

providers at a VA medical facility or in the community to address their health care needs. Given the difficulty in providing mental health care under these circumstances, the most practical way to consistently provide all VA beneficiaries with access to high-quality mental health care is through the telehealth program. The data collected in FY 2016 demonstrates that telehealth, particularly in the mental health context, improves patient care and improves patient outcomes. In FY 2016, there was a 31 percent decrease in VA hospital admissions for beneficiaries enrolled in the Home Telehealth monitoring program for non-institutional care needs and chronic care management. Also, beneficiaries who received mental health services through synchronous video telehealth in FY 2016 saw a reduction in the number of acute psychiatric VA bed days of care by 39 percent.

In addition, monitoring general medical conditions in the beneficiaries' home empowers beneficiaries to take a more active role in their overall health care without adding the stress of commuting to a medical facility to receive the same type of care. Telehealth is particularly important for beneficiaries with limited mobility, or for whom travel to a health care provider would be a personal hardship. For example, beneficiaries who have conditions such as a history of stroke, traumatic brain injuries, seizure disorders, and amyotrophic lateral sclerosis (ALS) may find it difficult to leave their home in order to receive much-needed health care. VA also is able to provide health care services to more beneficiaries in localities that are more convenient for them, which may lead to the beneficiary taking a more proactive approach to their care, thereby increasing the likelihood of positive clinical outcomes.

Other benefits of expanding VA telehealth include serving as a recruitment incentive for VA health care providers and allowing VA to address recruitment shortages in various parts of the country. For example, the Charleston, South Carolina VAMC serves as one of the VA's National TeleMental Health Hubs and provides mental health services to beneficiaries across eight States with a team of approximately 30 full-time health care providers. There are currently multiple vacancies for TeleMental Health psychiatrists at the Charleston Hub, and in the past six months, applicants have only expressed interest in telework positions. Several VA health care providers have also left their positions within the past year because they were

seeking telework positions. If the health care providers were able to practice telehealth while working from VA-approved alternate worksites and still deliver the telehealth services where needed, the Charleston TeleMental Hub would be able to fill its vacancies and retain needed health care professionals.

These are just some examples of how expanding telehealth, and thereby expanding the locations where VA provides health care services, would allow VA to reach underserved areas or beneficiaries who are unable to travel, improving health outcomes for beneficiaries and allowing VA to better utilize its health care resources. For these reasons, VA proposes to establish a new regulation, 38 CFR 17.417 that would authorize VA health care providers to treat beneficiaries through telehealth irrespective of the location, in a State, of the VA health care provider or the beneficiary.

Proposed paragraph (a) of § 17.417 would contain the definitions that would apply to the new section. We would define the term "beneficiary" to mean "a veteran and any other individual receiving care under title 38 of the United States Code." We would use this definition because VA provides health care to veterans, certain family members of veterans, servicemembers, and others. This is VA's standard use of this term.

We propose to define the term "health care provider" consistent with the qualifications of appointees within the Veterans Health Administration under 38 U.S.C. 7402(b). We would incorporate the licensure, registration, or certification requirement from section 7402(b) and would state that health care providers must maintain "credentials (e.g., license, registration, or certification) in accordance with the requirements of their health care specialty as identified under 38 U.S.C. 7402(b)." This standard would ensure that VA health care providers are qualified to practice their individual health care specialty and also ensure patient safety. A health care provider as defined in this regulation cannot be a VA-contracted employee. Contract health care providers would be required to adhere to their individual State license, registration, or certification requirements.

We propose to define the term "State" consistent with 38 U.S.C. 101(20), and including political subdivisions of such States. We include political subdivisions in the definition because subdivisions of a State are granted legal authority from the State itself, so it would make sense to include entities

created by a State, or authorized by a State in the definition.

Last, in proposed paragraph (a)(4) of § 17.417, we would define the term “telehealth” to mean “the use of electronic information or telecommunications technologies to support clinical health care, patient and professional health-related education, public health, and health administration.” This definition would be consistent with other statutory definitions, such as a provision in the Public Health Service Act regarding mental health services delivered by telehealth in 42 U.S.C. 254c–16(a)(4).

As we have mentioned in this rulemaking, currently, individual States can restrict and limit where a health care provider can practice under a State license, certification, or registration. This proposed rulemaking would authorize VA health care providers to furnish telehealth services without regard to any State restriction that would prevent the provider from delivering care via telehealth. Proposed paragraph (b)(1) of § 17.417 would state that VA health care providers could provide “telehealth services, within their scope of practice and in accordance with privileges granted to them by the Department, irrespective of the State or location within a State where the health care provider or the beneficiary is physically located.” This would authorize VA health care providers to furnish care, consistent with their employment obligations, through telehealth, without fear of adverse action by any State. A health care provider’s practice within VA, however, would continue to be subject to the limitations “imposed by the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, on the authority to prescribe or administer controlled substances, as well as any other limitations on the provision of VA care set forth in applicable Federal law and policy.” This would ensure that providers would still be in compliance with critical laws concerning the prescribing and administering of controlled substances. We would also state that this rulemaking “only grants health care providers the ability to practice telehealth within the scope of their VA employment and does not otherwise grant health care providers additional authorities that go beyond the scope of the health care providers’ State license, registration, or certification.”

In proposed paragraph (b)(2)(i) through (vii) of § 17.417, we would provide situations where a health care provider’s practice of telehealth could be inconsistent with a State law or State license, registration, or certification

requirements while engaging in the practice of telehealth in VA. These examples would be consistent with the reasons VA is proposing to take this rulemaking action, as described above.

Proposed paragraph (c) would expressly state the intended preemptive effect of § 17.417, to ensure that conflicting State and local laws, rules, regulations, and requirements related to health care providers’ practice would have no force or effect when such providers are practicing telehealth while working within the scope of their VA employment. In circumstances where there is a conflict between Federal and State law, Federal law would prevail in accordance with Article VI, clause 2, of the U.S. Constitution (Supremacy Clause).

#### **Executive Order 13132, Federalism**

Section 4 of Executive Order 13132 (Federalism) requires an agency that is publishing a regulation that preempts State law to follow certain procedures. Section 4(b) requires agencies to “construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.” Section 4(c) states “Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.” Section 4(d) requires that when an agency “foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the agency shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.” Section 4(e) requires that when an agency “proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.” Section 6(c) states that “To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts State law, unless the agency, prior to the formal promulgation of the regulation, (1) consulted with State and local officials early in the process of developing the proposed regulation; (2) in a separately identified portion of the preamble to the regulation as it is to be

issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency’s prior consultation with State and local officials, a summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and (3) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.”

Because this proposed rule would preempt certain State laws, VA consulted with State officials in compliance with sections 4(d) and (e), as well as section 6(c) of Executive Order 13132. VA sent a letter to the National Governor’s Association, Association of State and Provincial Psychology, National Council of State Boards of Nursing, Federation of State Medical Boards, Association of Social Work Boards, and National Association of State Directors of Veterans Affairs on July 12, 2017, to state VA’s intent to allow VA health care providers to practice telehealth irrespective of the location of the health care provider or beneficiary in any State and regardless of State telehealth restrictions. In addition, the Director of the Federation of State Medical Boards solicited comments and input from the nation’s State Medical Boards. The Wisconsin Medical Examining Board unanimously passed a motion in support of the rule. The Rhode Island Board of Medical Licensure & Discipline (BMLD) responded to our letter by stating that BMLD considers physicians employed by VA to be exempt from license requirements as long as such physician maintains a valid license in another U.S. jurisdiction. BMLD also indicated that the exemption does not necessarily extend to prescribing controlled substances without an appropriate DEA registration. In response to this caveat, we have stated in this proposed rule that, if finalized, VA health care providers would be subject to “the limitations imposed by the Controlled Substances Act, 21 U.S.C. 801, *et seq.*, on the authority to prescribe or administer controlled substances, as well as any other limitations on the provision of VA care set forth in applicable Federal law and policy.” The State of Utah Department of Commerce also stated that the Utah Occupations and Professions Licensing Act exempts from licensure requirements in Utah

physicians, physician assistants, advanced practice nurses, psychologists or other health care provider who provide telehealth services as part of their VA employment as long as such health care provider is licensed in any State. Utah supports VA efforts to enhance telehealth services to all veterans. The Florida Board of Medicine stated that Florida does not prohibit the practice of telehealth except in certain circumstances and provided as an example that an in-person examination is required each time a physician issues a certification for medical marijuana. This proposed rule would supersede any State requirement regarding the practice of telehealth, such as the in-person examination requirement in Florida, and would maintain the restrictions imposed by Federal law and policy regarding the prescription of controlled substances. The North Carolina Medical Board recognizes the shortage of psychiatric care in rural and medically underserved communities and supports VA's initiative.

The President of the National Association of State Directors of Veterans Affairs (NASDVA) sent an email to all of its State directors informing the directors of the association's intent to fully support VA's initiative. The NASDVA also formally responded to our letter, which fully supports VA's plans to amend its regulations and enhance access to health care via telehealth services. The National Council of State Boards of Nursing (NCSBN) fully supports VA's initiative for health care providers to deliver services via telehealth as long as such providers maintain a valid State license. However, the NCSBN does not support expanding VA State licensure exemptions to personal services contractors who practice telehealth. As stated in this proposed rulemaking, VA contractors would be excluded from providing telehealth services.

The Chief Executive Officer of the Association of State and Provincial Psychology Boards formally responded to our letter and indicated that the proposed rule is in alignment with their current initiatives, specifically, Psychology Interjurisdictional Compact (PSYPACT) legislation, which has been adopted in three jurisdictions and is under active consideration in many more States. The PSYPACT legislation allows psychologists to provide telepsychology services across State lines via a compact without obtaining additional licenses. The Chief Executive Officer further stated that these services will be of assistance in addressing the delivery of telehealth services to veterans.

The Veterans' Rural Health Advisory Committee (VRHAC) formally submitted a letter in support of the proposed rule. The letter stated that although VA leads the way in being the largest provider of telehealth in the country, there are barriers that affect many rural and highly rural areas, which includes limited internet or cellular access with sufficient bandwidth to support the required applications and also State legislations that restrict the practice of telehealth across State lines or into a veteran's home. The commenter strongly supports the proposed rule and further adds that expanding telehealth to rural and highly rural veterans across State lines would strengthen the delivery of care to enrolled veterans who live in rural and highly rural areas and supports the critical need for access to mental health care.

The West Virginia Board of Osteopathic Medicine responded to VA's letter and indicated that West Virginia has made legislative changes to encourage physician participation in the VA system. The commenter stated that W.Va. Code 30-14-12c authorizes the West Virginia licensing boards to issue a license to a physician licensed in another State via reciprocity when the applicant presents proof that they are a VA employee working in a VA medical facility that is located in a county where a nursing home is operated by the West Virginia Department of Veteran's Assistance. Also, W.Va. Code 30-14-12d states the requirements for practicing telemedicine in West Virginia and defines that the practice of medicine occurs where the patient is located and defines what constitutes a physician-patient relationship. The commenter stated that the West Virginia Board of Osteopathic Medicine rarely knows when a VA physician is practicing in West Virginia without a West Virginia State license. However, the commenter cautioned that if a VA physician is licensed in West Virginia and does not follow state law and such action becomes known to the Board, the Board would file a complaint and investigate such action. The commenter stated that their telehealth law was written to protect patients and indicated that veterans deserved the same high quality care. As we have stated in this proposed rule, we are preempting State law as it applies to health care providers who practice telehealth while acting within the scope of their VA employment.

The Pennsylvania State Board of Medicine responded to VA's letter and acknowledged the potential value for telehealth to expand access to health care, especially in rural and

underserved areas. The commenter further stated that Pennsylvania law on the Interstate Medical Licensure Compact affirms that the practice of medicine occurs where the patient is located at the time of the health care encounter, which requires the physician to be under the jurisdiction of the State medical board where the patient is located. The commenter indicated that VA has oversight of its health care providers, however, the foundational principle that the physician should be licensed where the patient is located helps to assure the safety, quality, and accountability of the care provided. This proposed rule preempts State law as it applies to health care providers who practice telehealth while acting within the scope of their VA employment.

The Michigan Department of Licensing and Regulatory Affairs responded to VA's letter by stating that Michigan law does not require a VA health care provider to hold a Michigan State license in the discharge of official duties. The commenter also stated that telehealth at a VA medical facility would be permitted. However, if the health care provider is delivering care to the beneficiary's home, such provider would need a Michigan State license. As we have indicated in this proposed rule, VA would preempt State law as it applies to health care providers who practice telehealth while acting within the scope of their VA employment.

The Virginia Board of Medicine responded to VA's letter by stating that the Executive Committee of the Board met and supported the enhancement of access to care for veterans. The commenter stated that the proposed rule should benefit many beneficiaries that have little or no access to health care.

The comments provided above will be placed on *Regulations.gov* for public inspection during the comment period. Stakeholders will also have an opportunity to provide comments during the notice and comment period.

This proposed rule complies with Executive Order 13132 by (1) identifying where the exercise of State authority would directly conflict with the rule; (2) limiting preemption to these areas of conflict; (3) restricting preemption to the minimum level necessary to achieve the objectives of the statutes pursuant to which the rule is promulgated; (4) consulting with the external stakeholders listed in this rule; and (5) providing opportunity for all affected State and local officials to comment on this proposed rulemaking.

#### Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this proposed

rule, represents VA's implementation of its legal authority on this subject. Other than future amendments to this rule or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rule if possible. If not possible, such guidance is superseded by this rule.

#### **Paperwork Reduction Act**

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule directly affects only individuals who are VA employees and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

#### **Executive Orders 12866, 13563, and 13771**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of

entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”

OMB has determined that it is a significant regulatory action under Executive Order 12866 given the policy implications. In addition, under Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), this proposed rule is expected to be an E.O. 13771 deregulatory action, though VA is not able to quantify any cost savings associated with it. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published from FY 2004 Through Fiscal Year to Date.”

Executive Order 12866 also directs agencies to “include a comment period of not less than 60 days.” Given the importance of telehealth in providing critical, and potentially lifesaving, access to health care for our beneficiaries, VA must act expeditiously, through this rulemaking, to ensure that it can expand its telehealth program. The primary barrier to the expansion of VA's telehealth program is that States' licensing boards have placed explicit restrictions on the use of telehealth in their States and have not made exceptions for VA providers, which ultimately inhibits VA providers from delivering VA health care to beneficiaries. Five of the States with the largest veteran populations, California, Texas, Florida, New York, and Ohio, have enacted laws and rules that restrict health care providers' ability to practice telehealth across State lines. See, 16 C.C.R. § 1815.5; Cal Bus & Prof Code §§ 2052, 2060; TX Occupation Code § 151.056; TX Admin Code, Title 22, § 172.12; FL Admin Code 64B8–9.0141; FL Admin Code 64B15–14.0081; NY Consolidated Law Service Public Health § 2805–u; OH Revised Code Annotated, Sec. 4731.296(C). As telehealth capabilities continue to expand, new State legislation and regulations across the country are enacted relating to the practice of telehealth. The possibility of sanctions to VA health care providers' State license, including fines and imprisonment for unauthorized practice of medicine has hindered VA's ability to expand its telehealth program. To protect VA health care providers from

potential adverse actions by States, many VAMCs are currently not expanding some critical telehealth services if the health care service is provided outside Federal property (such as when the VA provider is delivering telehealth care from his or her home) or across State lines, or the care is delivered in a beneficiary's home. In addition many individual VA health care providers refuse to practice telehealth because of concerns over States taking action against their State license. This rule will supersede State restrictions on the practice of telehealth and allow VA health care providers to practice telehealth anywhere within a State (such as from the residence of the health care provider) and across State lines.

In sum, providing a 60 day public comment period instead of a 30 day public comment period would be against public interest and the health and safety of VA beneficiaries because any restriction from a State or State licensing board on practicing telehealth, within the State or across State lines, could impede beneficiaries' access to health care, which will ultimately impact the health of the beneficiary. For the above reasons, the Secretary issues this rule with a 30 day public comment period. VA will consider and address comments that are received within 30 days of the date this proposed rule is published in the **Federal Register**.

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are: 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; 64.039 CHAMPVA; 64.040 VHA Inpatient Medicine; 64.041 VHA Outpatient

Specialty Care; 64.042 VHA Inpatient Surgery; 64.043 VHA Mental Health Residential; 64.044 VHA Home Care; 64.045 VHA Outpatient Ancillary Services; 64.046 VHA Inpatient Psychiatry; 64.047 VHA Primary Care; 64.048 VHA Mental Health Clinics; 64.049 VHA Community Living Center; and 64.050 VHA Diagnostic Care.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on July 28, 2017 for publication.

#### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: September 26, 2017.

**Michael Shores,**

*Director, Regulation Policy & Management,  
Office of the Secretary, Department of  
Veterans Affairs.*

For the reasons set forth in the preamble, we propose to amend 38 CFR part 17 as follows:

#### PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by adding an entry for § 17.417 in numerical order to read in part as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

\* \* \* \* \*

Section 17.417 also issued under 38 U.S.C. 1701 (note), 1709A, 1712A (note), 1722B, 7301, 7330A, 7401–7403; 7406 (note)).

■ 2. Revise the undesignated center heading immediately after § 17.412 to read as follows:

**Authority of Health Care Providers to Practice in the Department**

■ 3. Add § 17.417 to read as follows:

#### § 17.417 Health care providers.

(a) *Definitions.* The following definitions apply to this section.

(1) *Beneficiary.* The term beneficiary means a veteran or any other individual receiving health care under title 38 of the United States Code.

(2) *Health care provider.* The term health care provider means an individual who:

(i) Is licensed, registered, or certified in a State to practice a health care specialty identified under 38 U.S.C. 7402(b);

(ii) Is appointed to an occupation in the Veterans Health Administration that is listed in or authorized under 38 U.S.C. 7401(1) or (3);

(iii) Maintains credentials (*e.g.*, a license, registration, or certification) in accordance with the requirements of his or her medical specialty as identified under 38 U.S.C. 7402(b); and

(iv) Is not a VA-contracted employee.

(3) *State.* The term State means a State as defined in 38 U.S.C. 101(20), or a political subdivision of such a State.

(4) *Telehealth.* The term telehealth means the use of electronic information or telecommunications technologies to support clinical health care, patient and professional health-related education, public health, and health administration.

(b) *Health care provider's practice.* (1) Health care providers may provide telehealth services, within their scope of practice and in accordance with privileges granted to them by the Department, irrespective of the State or location within a State where the health care provider or the beneficiary is physically located. Health care providers' practice is subject to the limitations imposed by the Controlled Substances Act, 21 U.S.C. 801, et seq., on the authority to prescribe or administer controlled substances, as well as any other limitations on the provision of VA care set forth in applicable Federal law and policy. This section only grants health care providers the ability to practice telehealth within the scope of their VA employment and does not otherwise grant health care providers additional authorities that go beyond the scope of the health care providers' State license, registration, or certification.

(2) Situations where a health care provider's VA practice of telehealth may be inconsistent with a State law or State license, registration, or certification requirements related to telehealth include when:

(i) The beneficiary and the health care provider are physically located in different States during the episode of care;

(ii) The beneficiary is receiving services in a State other than the health care provider's State of licensure, registration, or certification;

(iii) The health care provider is delivering services in a State other than the health care provider's State of licensure, registration, or certification;

(iv) The health care provider is delivering services either on or outside VA property;

(v) The beneficiary is receiving services while she or he is located either on or outside VA property;

(vi) The beneficiary has or has not previously been assessed, in person, by the health care provider; or

(vii) Other State requirements would prevent or impede the practice of health care providers delivering telehealth to VA beneficiaries.

(c) *Preemption of State law.* To achieve important Federal interests, including, but not limited to, the ability to provide the same complete medical and hospital service to beneficiaries in all States under 38 U.S.C. 7301, this section preempts conflicting State laws relating to the practice of health care providers when such health care providers are practicing telehealth within the scope of their VA employment. Any State law, rule, regulation or requirement pursuant to such law, is without any force or effect on, and State governments have no legal authority to enforce them in relation to, this section or decisions made by VA under this section.

[FR Doc. 2017–20951 Filed 9–29–17; 8:45 am]

BILLING CODE 8320–01–P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA–R06–OAR–2016–0406; FRL–9967–77–Region 6]

#### Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque and Bernalillo County; Regional Haze Progress Report State Implementation Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a revision to a State Implementation Plan (SIP) for the City of Albuquerque and Bernalillo County, New Mexico (the County) submitted by the Governor on June 24, 2016. The SIP revision addresses

requirements of the Act and the EPA's rules that require the County to submit a periodic report assessing reasonable progress goals (RPGs) for regional haze with a determination of the adequacy of the existing regional haze SIP.

**DATES:** Written comments must be received on or before November 1, 2017.

**ADDRESSES:** Submit comments, identified by Docket No. EPA-R06-OAR-2016-0406, at <http://www.regulations.gov> or via email to [grady.james@epa.gov](mailto:grady.james@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit any information electronically that is considered Confidential Business Information (CBI) or any other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment will be considered the official comment with multimedia submissions and should include all discussion points desired. The EPA will generally not consider comments or their contents submitted outside of the primary submission (*i.e.* on the web, cloud, or other file sharing systems). For additional submission methods, please contact James E. Grady, (214) 665-6745, [grady.james@epa.gov](mailto:grady.james@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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

**FOR FURTHER INFORMATION CONTACT:** James E. Grady, (214) 665-6745; [grady.james@epa.gov](mailto:grady.james@epa.gov). To inspect the hard copy materials, please schedule an appointment with James E. Grady or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," or "our" each mean "the EPA."

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## I. Background on Regional Haze

### A. Visibility Protection

Regional haze is visibility impairment that occurs over a wide geographic area primarily from the pollution of fine particles (PM<sub>2.5</sub>) in nature.<sup>1</sup> Fine particles causing haze consist of sulfates, nitrates, organics, elemental carbon (EC), and soil dust.<sup>2</sup> Airborne PM<sub>2.5</sub> can scatter and absorb the incident light and, therefore, lead to atmospheric opacity and horizontal visibility degradation. Regional haze limits visual distance and reduces color, clarity and contrast of view. Emissions that affect visibility include a wide variety of natural and man-made sources. In New Mexico, the most important sources of haze-forming

<sup>1</sup> Fine particles are less than or equal to 2.5 microns (μm) in diameter and usually form secondary in nature indirectly from other sources. Particles less than or equal to 10 μm in diameter are referred to as PM<sub>10</sub>. Particles greater than PM<sub>2.5</sub> but less than PM<sub>10</sub> are referred to as coarse mass. Coarse mass can contribute to light extinction as well and is made up of primary particles directly emitted into the air. Fine particles tend to be man-made, while coarse particles tend to have a natural origin. Coarse mass settles out from the air more rapidly than fine particles and usually will be found relatively close to emission sources. Fine particles can be transported long distances by wind and can be found in the air thousands of miles from where they were formed.

<sup>2</sup> Organic carbon (OC) can be emitted directly as particles, or formed through reactions involving gaseous emissions. Elemental carbon, in contrast to organic carbon, is exclusively of primary origin and emitted by the incomplete combustion of carbon-based fuels. They are especially prevalent in diesel exhaust and smoke from wild and prescribed fires.

emissions are coal-fired power plants, oil and gas development, woodland fires, and windblown dust. Reducing PM<sub>2.5</sub> and its precursor gases in the atmosphere is an effective method of improving visibility. PM<sub>2.5</sub> precursors consist of sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), ammonia (NH<sub>3</sub>) and volatile organic compounds (VOCs).

### B. Regulation Overview

In section 169A of the 1977 CAA Amendments, Congress declared as a national goal the prevention of any future, and the remedying of any existing, visibility impairment in mandatory class I Federal areas where impairment results from manmade air pollution.<sup>3</sup> Congress added section 169B to the CAA in 1990 that added visibility protection provisions, and the EPA published final regulations addressing regional haze with the 1999 Regional Haze Rule (RHR).<sup>4</sup> The RHR revised the existing visibility regulations and established a more comprehensive visibility protection program for mandatory Class I areas. The requirements for regional haze are found at 40 CFR 51.308 and 51.309. States must demonstrate reasonable progress toward meeting the national goal of a return to natural visibility conditions for mandatory Class I Federal areas both within and outside states by 2064. The requirement to submit a regional haze SIP applies to all fifty states, the District of Columbia, and the Virgin Islands. The City of Albuquerque and Bernalillo County,<sup>5</sup> New Mexico must also submit

<sup>3</sup> Mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. The EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility was identified as an important value. The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. Although states and tribes may designate additional areas as Class I, the requirements of the visibility program set forth in the CAA applies only to "mandatory Class I Federal areas." Each mandatory Class I Federal area is the responsibility of a "Federal Land Manager." When the term "Class I area" is used in this action, it means "mandatory Class I Federal areas." [See 44 FR 69122, November 30, 1979 and CAA Sections 162(a), 169A, and 302(i)].

<sup>4</sup> See July 1, 1999 Regional Haze Rule final action (64 FR 35714), as amended in July 6, 2005 (70 FR 39156), October 13, 2006 (71 FR 60631), June 7, 2012 (77 FR 33656) and in January 10, 2017 (82 FR 3079).

<sup>5</sup> Note that the City of Albuquerque and Bernalillo County is treated like a "state" for purposes of implementing the RHR, which is written specifically for states. The EPA regulates and funds Bernalillo County as it does any other state air agency. Enacted in 1967, the New Mexico State Air Quality Control Act [NMSA 1978 Sections 74-2-4, 74-2-5, and 74-2-7] allowed for the establishment of the Air Quality Control Board (AQCB) as a local

Continued

a regional haze SIP separate from the State of New Mexico<sup>6</sup> to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State under the New Mexico Air Quality Control Act (section 74–2–4).<sup>7</sup>

## II. Requirements for Regional Haze Progress Report

The RHR requires a comprehensive analysis of each state's regional haze SIP every ten years and a progress report at five-year intervals. The five-year review is intended to provide an interim report on the implementation of, and, if necessary, mid-course corrections to, the regional haze SIP. The progress report provides an opportunity for public input on the County's (and the EPA's) assessment of whether the approved regional haze SIP is being implemented appropriately and whether reasonable visibility progress is being achieved consistent with the projected visibility improvement in the SIP. At a minimum, the required elements of the progress report under the RHR must include the following seven elements:<sup>8</sup>

(1) Provide a description of the status of implementation of all measures included in the regional haze SIP.

(2) Summarize the emissions reductions achieved throughout the state.

(3) Provide an assessment of current visibility conditions and the change in visibility impairment over the past five years.

(4) Provide analysis tracking the change over the past five years in emissions of pollutants contributing to visibility impairment from all sources and activities within the state.

board and empowered it with the authority to administer and enforce its air quality regulations within Bernalillo County. The AQCB has jurisdiction over all of Bernalillo County, (including the City of Albuquerque), except Indian lands. The State of New Mexico Environmental Improvement Board (EIB) has jurisdiction over all other counties in New Mexico.

<sup>6</sup>On December 31, 2003, New Mexico submitted a regional haze SIP with later revisions (July 5, 2011 and October 7, 2013) that addressed 40 CFR 51.309. The EPA approved both of the (2003 and 2011) submittals on November 27, 2012 (77 FR 70693) and approved a 2013 revision on October 9, 2014 with two separate rules (79 FR 60985 and 79 FR 60978). The New Mexico progress report was approved by the EPA on November 3, 2015 (see 80 FR 67682).

<sup>7</sup>On November 12, 2003, the County first adopted its 40 CFR 51.309 regional haze SIP with later revisions (August 13, 2008; June 8, 2011). The EPA approved these submittals on Apr. 25, 2012 (77 FR 24768).

<sup>8</sup>See also *General Principles for the 5-Year Regional Haze Progress Reports for the Initial Regional Haze State Implementation Plans* (Intended to Assist States and EPA Regional Offices in Development and Review of the Progress Reports), April 2013, EPA-454/B-03-005, available at [https://www.epa.gov/sites/production/files/2016-03/documents/haze\\_5year\\_4-10-13.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/haze_5year_4-10-13.pdf).

(5) Provide an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred over the past five years that have limited or impeded progress in reducing pollutant emissions and improving visibility.

(6) Provide an assessment of whether the current SIP elements and strategies are sufficient to enable the state (or other states with mandatory Class I areas affected by emissions from the state) to meet all established RPGs.

(7) Provide a review of the state's visibility monitoring strategy and any modifications to the strategy as necessary.

The City of Albuquerque and Bernalillo County, New Mexico submitted its progress report SIP for the County under 40 CFR 51.309 on June 24, 2016. Typically, progress report requirements of most states are covered under 40 CFR 51.308(g) and (h). 40 CFR 51.309 presents nine western states with an optional approach of fulfilling RHR requirements by adopting emission reduction strategies developed by the Grand Canyon Visibility Transport Commission (GCVTC). These strategies were designed primarily to improve visibility of sixteen Class I areas in the Colorado Plateau area.<sup>9</sup> Three western states (New Mexico, Utah and Wyoming) including the City of Albuquerque and Bernalillo County, NM exercised the option provided in the RHR to meet alternative requirements contained in 40 CFR 51.309 for regional haze SIPs. For these states, the required content of the five-year progress report is identical with those for the other states, but are codified at 40 CFR 51.309(d)(10) instead of at 40 CFR 51.308 (g) and (h). This section specifies fixed due dates in 2013 and 2018 for these progress reports.<sup>10</sup> In contrast, under 40 CFR 51.308, states must submit a progress report five years from submittal of the initial implementation plan. Under 40 CFR

<sup>9</sup>The Colorado Plateau is a high, semi-arid tableland in Southeast Utah, Northern Arizona, Northwest New Mexico, and Western Colorado. The sixteen mandatory Class I areas are as follows: Grand Canyon National Park, Mount Baldy Wilderness, Petrified Forest National Park, Sycamore Canyon Wilderness, Black Canyon of the Gunnison National Park Wilderness, Flat Tops Wilderness, Maroon Bells Wilderness, Mesa Verde National Park, Weminuche Wilderness, West Elk Wilderness, San Pedro Parks Wilderness, Arches National Park, Bryce Canyon National Park, Canyonlands National Park, Capital Reef National Park, and Zion National Park.

<sup>10</sup>The 1999 RHR provided that these three states will eventually revert to the progress report due date requirements in 40 CFR 51.308 for the second implementation period. Recently, there was an extension of the second regional haze implementation period deadline from 2018 to 2021. (82 FR 3080, January 10, 2017).

51.309(d)(10)(ii), states are required to submit, at the same time as the progress report SIP, a determination of the adequacy of their existing regional haze SIP and to take one of four possible actions, as described in more detail in this proposal.

## III. Evaluation of Regional Haze Progress Report

On July 28 2011, the AQCB submitted a regional haze SIP for its own geographic area of Bernalillo County, New Mexico (including the City of Albuquerque) that addressed the requirements of 40 CFR 51.309.<sup>11</sup> This SIP submittal was a necessary component of the regional haze plan for New Mexico to ensure that the requirements of section 110(a)(2)(D) of the CAA were satisfied for the whole state. On July 6, 2016, the EPA received the periodic report on progress for the County's regional haze SIP in the form of a SIP revision. This latest submission is the subject of this proposed approval. The periodic report was made in the first implementation period to assess visibility progression for Class I areas in and outside of the County that were negatively affected by emissions from within the County. The progress report included the County's determination that the existing regional haze SIP required no substantive revisions to achieve the established regional haze visibility improvement and emission reduction goals for 2018. The EPA agrees with the County's assessment and is proposing to approve its progress report SIP on the basis that it satisfies all requirements of 40 CFR 51.309(d)(10) as explained in further details in each subsequent section.

### A. Class I Areas

The City of Albuquerque and Bernalillo County does not formulate specific RPGs for particular Class I areas within its borders since no such areas exist.<sup>12</sup> Therefore, the County is not required to identify RPGs or calculate baseline and natural visibility conditions at any Class I area. The County, however, is required to address the apportionment of visibility impact from the emissions generated by sources within the County at Class I areas outside of the County borders. As a result, the progress report addressed the emissions impact on RPGs and related emission reduction goals for nine Class I areas within the state of New Mexico that were identified as being close

<sup>11</sup> See the EPA's proposed approval (77 FR 24768, April 25, 2012) and final rule (77 FR 71119, November 29, 2012) for the County.

<sup>12</sup> See 77 FR 24768, 24790 (Apr. 25, 2012).

enough to the County that they could conceivably be affected by emissions from within the County. The nine Class I areas within New Mexico that were addressed in the progress report were: Bandelier Wilderness, Bosque del Apache National Wildlife Refuge, Carlsbad Caverns National Park, Gila Wilderness, Pecos Wilderness, Salt Creek Wilderness, Wheeler Peak Wilderness, White Mountain Wilderness, and San Pedro Parks Wilderness.<sup>13</sup> Visibility impairment at New Mexico's nine Class I areas was tracked in units of deciviews (dv)<sup>14</sup> as measured by eight monitors in the Interagency Monitoring of Protected Visual Environments (IMPROVE) Network. Through collaboration with the Western Regional Air Partnership (WRAP),<sup>15</sup> the AQCB worked with New Mexico and other western states to assess state-by-state contributions to visibility impairment in specific Class I areas affected by Albuquerque and Bernalillo County, NM emissions. The determinations in the progress report relied on the technical analysis and emission inventories developed by the WRAP which is documented online and also appears in the technical appendices.<sup>16</sup>

The EPA is proposing to find that the County has appropriately identified the Class I areas in this report which could be affected by emissions from within the County, as required by 40 CFR 51.309(g). This regulation provides a

requirement for compliance with 40 CFR 51.308(d) to the extent that planning is necessary for areas other than the sixteen Class I areas on the Colorado Plateau addressed in the initial 2003 regional haze SIP. In the ensuing sections, the EPA addresses these Class I areas and the seven regulatory elements required by the progress report SIP;<sup>17</sup> how the County's progress report SIP addressed each element; and the EPA's analysis and proposed determination as to whether the County satisfied each part.

#### B. Status of Control Strategies

40 CFR 51.309(d)(10)(i)(A) requires a description of the status of implementation of all control measures included in the regional haze SIP for achieving RPGs for Class I areas both within and outside the state.

The County evaluated the status of all control measures in its 2011 regional haze SIP in accordance with the requirements under 40 CFR 51.309(d)(10)(i)(A). The major control measures identified by the County in the progress report are as follows:

- SO<sub>2</sub> Milestone and Backstop Trading Program
- NO<sub>x</sub> and PM Control Strategies
- Best Available Retrofit Technology (BART)
- Mobile Sources Emissions<sup>18</sup>
- Fire and Smoke Management
- Fugitive and Unpaved Road Dust Measures
- Additional Controls—Local State Regulations

The County identified ammonium sulfate, particulate organic matter, and coarse mass as the largest contributors to visibility impairment at New Mexico's Class I areas that need to be controlled.<sup>19</sup> Many of the sources, however, that produce these visibility-impairing pollutants in New Mexico are natural, rather than anthropogenic in nature, and are not controllable. For the purpose of this progress report, the County focused on those emission sources that were anthropogenic in nature (as did New Mexico in its report). The primary sources of ammonium sulfate are point sources and mobile source emissions. Ammonium sulfate results from SO<sub>2</sub> and NH<sub>3</sub> precursor emissions. SO<sub>2</sub> emissions in New

Mexico are generally associated with anthropogenic point sources such as coal-fired power plants, other industrial sources like refineries and cement plants, and both on and off-road mobile sources. Particulate organic matter emissions in New Mexico are from natural and anthropogenic fire. Large wildfire events in the west dominate particulate organic aerosol emissions which are emitted directly into the air as particles instead of gases. Coarse mass emissions in New Mexico happen mainly as a result of windblown and fugitive dust. Coarse mass settles out of air more rapidly than fine particles, so strong wind events act as a transport vehicle to carry them long distances. Otherwise, they will typically be found close to the emission source.

#### 1. SO<sub>2</sub> Milestone and Backstop Trading Program

The progress report discussed the SO<sub>2</sub> Milestone and Backstop Trading Program as a control measure to reduce emissions for major sources of SO<sub>2</sub>.<sup>20</sup> The County has participated in this voluntary program since December 31, 2003.<sup>21</sup> As part of this program, the Section 309 western states and the County must submit an annual report that compares tracked stationary sources of SO<sub>2</sub> emissions to yearly milestones.<sup>22</sup> A milestone is an established maximum level of annual emissions for a given year (from 2003–2018). The milestones help establish annual SO<sub>2</sub> emission reduction targets. The annual targets represent RPGs in reducing visibility-impairing emissions. If states fail to meet the milestones, then the backstop-trading program is triggered to

<sup>20</sup> Under Section 309, nine western states and the tribes within those states had the option of submitting plans to reduce visibility-impairing emissions at sixteen Class I areas on the Colorado Plateau. Five states (Arizona, New Mexico, Oregon, Utah, Wyoming) and the City of Albuquerque and Bernalillo County, NM exercised this option by submitting plans to the EPA by December 1, 2003. Oregon and Arizona have since elected to cease participation in the Milestone and Backstop Trading Program in 2006 and 2010, respectively. The tribes are not subject to any deadline and can still opt into the program at any time.

<sup>21</sup> The County cooperates with its WRAP partners to maintain an inventory of regional SO<sub>2</sub> emissions, across the Section 309 states. The City of Albuquerque Air Quality Program (AQP) monitors SO<sub>2</sub> ambient air concentrations in Bernalillo County consistent with EPA regulations. See the City of Albuquerque Environmental Health Department (EHD) Web site at <https://www.cabq.gov/airquality/documents> for Annual Network Reviews for Ambient Air Monitoring.

<sup>22</sup> See WRAP Web site at <https://www.wrapair2.org/reghaze.aspx> for the Regional Milestone reports. A final 2014 milestone report was posted on March 7, 2016 and a draft 2015 report was posted recently on March 20, 2017. Appendix G of the County progress report includes the 2013 Regional SO<sub>2</sub> Emissions and Milestone Report.

<sup>13</sup> The Section 309 SIP submitted by New Mexico in December 2003 addressed only San Pedro Parks Wilderness Area and the other Class I areas were added in a later SIP revision under Section 309(g) in June 2011 and revised in October 2013. The EPA approved both of the (2003 and 2011) submittals on November 27, 2012 (77 FR 70693) and approved a 2013 revision on October 9, 2014 with two separate rules (79 FR 60985 and 79 FR 60978).

<sup>14</sup> A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The preamble to the RHR provides additional details about the deciview (64 FR 35714, 35725, July 1, 1999).

<sup>15</sup> The WRAP is a collaborative effort of tribal governments, state governments and various federal agencies representing the western states that provides technical and policy tools for the western states and tribes to comply with the EPA's Regional Haze regulations. Detailed information regarding WRAP support of air quality management issues for western states is provided on the WRAP Web site ([www.wrapair2.org](http://www.wrapair2.org)). Data summary descriptions and tools specific to RHR support are available on the WRAP Technical Support System Web site (<http://vista.cira.colostate.edu/tss/>).

<sup>16</sup> The Western Regional Air Partnership Regional Haze Rule Reasonable Progress Summary Report technical support document has been prepared on behalf of the fifteen Western State members in the WRAP region to provide the technical basis for use by states to develop the first of their individual reasonable progress reports for the 116 Federal Class I areas located in the Western states.

<sup>17</sup> See 40 CFR 51.309(d)(10)(i).

<sup>18</sup> Under 40 CFR 51.309(d)(5)(ii), New Mexico is required to submit interim reports to the EPA and the public on the implementation status of the regional and local strategies to address mobile source emissions.

<sup>19</sup> See the County's 2016 regional haze progress report submittal (page 9) which was reiterated in New Mexico's regional haze progress report (page 7).

implement an emissions cap. The cap allocates emission allowances (or credits) to the affected sources based on the cap, and requires the sources to hold sufficient allowances to cover their emissions each year.

The regional haze SIP requires multiyear averaging of emissions for the milestone comparison. From 2005–2017, the three-year average, which

includes the reporting year and the two previous years, is calculated and compared to the milestone. The regional milestone for 2013 was 185,795 tons SO<sub>2</sub>. The three-year average SO<sub>2</sub> emissions for 2011, 2012, and 2013 was 105,402 tons SO<sub>2</sub>, which was 43 percent below the 2013 milestone. In table 1 below, 2014 and 2015 WRAP data shows similar SO<sub>2</sub> reduction trends that

continue beyond 2013 toward 2018. No triggering of the backstop trading program has been necessary and the likelihood of meeting the 2018 target means no changes in the program are needed at the moment. The compliance dates show that SO<sub>2</sub> emissions have consistently been below each annual RPG and are currently tracking to be below the 2018 milestone.

TABLE 1—SO<sub>2</sub> EMISSION MILESTONES<sup>23</sup>

| Year               | Regional SO <sub>2</sub> milestone tons per year (tpy) | Average SO <sub>2</sub> emissions to determine compliance with milestone |                       |
|--------------------|--------------------------------------------------------|--------------------------------------------------------------------------|-----------------------|
|                    |                                                        | SO <sub>2</sub> (tpy)                                                    | 3-Year average        |
| 2008 .....         | 269,083                                                | 265,662 .....                                                            | 2006, 2007 and 2008.  |
| 2009 .....         | 234,903                                                | 165,633 .....                                                            | 2007, 2008 and 2009.  |
| 2010 .....         | 200,722                                                | 146,808 .....                                                            | 2008, 2009 and 2010.  |
| 2011 .....         | 200,722                                                | 130,935 .....                                                            | 2009, 2010 and 2011.  |
| 2012 .....         | 200,722                                                | 115,115 .....                                                            | 2010, 2011 and 2012.  |
| 2013 .....         | 185,795                                                | 105,402 .....                                                            | 2011, 2012 and 2013.  |
| 2014 .....         | 170,868                                                | 96,392 .....                                                             | 2012, 2013 and 2014.  |
| 2015 .....         | 155,940                                                | 91,310 .....                                                             | 2013, 2014 and 2015.  |
| 2016 .....         | 155,940                                                | Not Available .....                                                      | 2014, 2015 and 2016.  |
| 2017 .....         | 155,940                                                | Not Available .....                                                      | 2015, 2016 and 2017.  |
| 2018 .....         | 141,849                                                | Not Available .....                                                      | 2016, 2017 and 2018.  |
| 2019 forward ..... | 141,849                                                | Not Available .....                                                      | Annual; no averaging. |

## 2. NO<sub>x</sub> and PM Control Strategies

The County included a report in its 2011 regional haze SIP that assessed emission control strategies for NO<sub>x</sub> and PM stationary sources, and the degree of visibility improvement that would result from their implementation.<sup>24</sup> The report concluded that current and future NO<sub>x</sub> and PM emissions do not show to be major contributors to regional haze (typically about two percent on average) in the vast majority of western Class I areas. The report represented the initial assessment of stationary source NO<sub>x</sub> and PM strategies for regional haze, and was a starting point for a more extensive analysis in the future. The 2011 regional haze SIP stated that the progress report would assess the need for new NO<sub>x</sub> and PM control measures to address any new contributions to regional haze from stationary sources in the County. The County concluded in the progress report that it does not find new control measures necessary for NO<sub>x</sub> and PM stationary sources at this time. Stationary source NO<sub>x</sub> and PM emissions in the County have not impeded reasonable progress of

emissions and visibility in New Mexico as a whole and are not likely to do so. Please refer to the emission reduction section of this report for more details regarding NO<sub>x</sub> and PM emissions.

## 3. Best Available Retrofit Technology (BART)<sup>25</sup>

The regional haze SIP determined that there are no BART-eligible sources in the County, so there are no requirements to install BART controls.<sup>26</sup> Even so, the progress report mentioned how the County must still specifically demonstrate that its SO<sub>2</sub> milestone and backstop-trading program will achieve greater reasonable progress than would be achieved by implementation of BART controls.<sup>27</sup> Under this approach, a section 51.309 regional haze SIP must

<sup>25</sup> BART sources are those sources that have the potential to emit 250 tons or more of visibility-impairing pollutants, were put in place between August 7, 1962 and August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories.

<sup>26</sup> The WRAP identified three potential BART-eligible sources in the County. These were PNM Reeves Generating Station, GCC Rio Grande Inc., and Cobisa Person Power Project. The AQCB assessed whether these facilities were existing stationary facilities as defined at 40 CFR 51.301 and determined that all three sources were not BART-eligible. PNM Reeves and GCC Rio Grande were not in existence nor operating during the requisite time period, and Cobisa Person Power Project did not have emission units in the 26 source categories for BART. See the EPA's proposed approval for the County's regional haze SIP (77 FR 24768, 24782, April 25, 2012).

<sup>27</sup> 40 CFR 51.309(d)(4)(i).

establish declining SO<sub>2</sub> emission milestones for each year of the program through 2018. The milestones must be consistent with the GCTVC's goal of fifty to seventy percent reduction in SO<sub>2</sub> emissions by 2040. As demonstrated in the County's regional haze SIP, the SO<sub>2</sub> milestones provide greater reasonable progress than BART and track at a sixty percent pace reduction of the 1990 SO<sub>2</sub> emission levels.<sup>28</sup> The actual annual SO<sub>2</sub> emission reduction results outperformed this milestone pace. The progress report showed that the three-year average SO<sub>2</sub> emissions for 2013 was 43 percent below the 2013 milestone at 105,402 tons SO<sub>2</sub> (see Table 1). That represents a 71 percent reduction from the 1990 emission totals and is exceeding the GCVTC goal of fifty to seventy percent reduction. The regional SO<sub>2</sub> emissions have continued to decline at a faster pace than called for by the SO<sub>2</sub> milestones. Thus, as anticipated, the milestone program has actually continued to achieve greater reasonable progress than would be the case if BART were implemented.

## 4. Mobile Source Emissions

The progress report mentioned that the County is relying upon federal standards as long-term measures to

<sup>28</sup> See the County's 2011 regional haze SIP submittal (pages 112–124). SO<sub>2</sub> emissions from sources in 1990 totaled 358,364 tpy and the 2018 milestone is 141,849 tpy, which represents sixty percent reduction.

<sup>23</sup> The milestone numbers reflect the participation of Wyoming, Utah, and New Mexico (including the City of Albuquerque and Bernalillo County) in the 309 backstop trading program.

<sup>24</sup> The report, *Stationary Source NO<sub>x</sub> and PM Emissions in the WRAP Region: An Initial Assessment of Emissions, Controls, and Air Quality Impacts*, was prepared by the WRAP and is included in Appendix H–O of the SIP.

achieve declines in mobile source emissions that contribute to regional haze.<sup>29</sup> The County also committed itself in the SIP to monitoring mobile source emissions (through the WRAP) to assure a continuous decline in emissions as defined in 40 CFR 51.309(b)(6).<sup>30</sup> A statewide inventory of baseline and future annual mobile source emissions has been compiled for the years 2003–2018 with assistance from the WRAP.<sup>31</sup>

#### 5. Fire and Smoke Management

The County is relying on fire and smoke management programs under 20.11.21 NMAC, *Open Burning*, in order to help control anthropogenic fire related emissions of VOCs, NO<sub>x</sub>, elemental carbon, organic carbon, and PM<sub>2.5</sub>. This regulation requires that most open burning in Bernalillo County be conducted under a permit from the City of Albuquerque EHD subject to specific requirements, including: reporting of emissions for use in emissions

inventories; consideration of alternatives to burning; use of enhanced smoke management techniques recommended by the WRAP; and use of specific emission reduction techniques. The programs in this measure are generally designed to limit increases in emissions, rather than to reduce existing emissions.

#### 6. Fugitive and Unpaved Road Dust Measures

The progress report mentioned measures that provide for control of PM<sub>10</sub> and PM<sub>2.5</sub> emissions from unpaved roads and from stationary fugitive dust sources.<sup>32</sup> The EHD implements this requirement through 20.11.20 NMAC, *Fugitive Dust Control*, which requires the use of reasonably available control measures (RACM) to reduce fugitive dust that impairs visibility or adversely affects public health, welfare, and safety.<sup>33</sup> The measure prevents fugitive dust from leaving sites where it is produced, and thus reduces the amount

of those emissions. The regulation requires sources to obtain permits and pay related fees, limits construction activity, and has an active enforcement program in place to implement the provisions on an ongoing basis. In addition, the AQCB tracks road dust emissions with the assistance of the WRAP. They provide updates, including modeling and monitoring information, on paved and unpaved road dust emission impacts on visibility in the sixteen Colorado Plateau Class I Areas.

#### 7. Additional Controls—Local State Regulations

The County lists several local regulations that are being used to aid in controlling emissions that contribute to the formation of regional haze at Class I areas. These regulations, and the pollutants targeted by them, appear in table 2 below. The EHD implements and enforces these regulations on a continuing basis.

TABLE 2—COUNTY REGULATIONS APPLICABLE TO REGIONAL HAZE<sup>34</sup>

| Regulation           | Description                                   | Pollutant controlled                    |
|----------------------|-----------------------------------------------|-----------------------------------------|
| 20.11.22 NMAC .....  | Wood burning .....                            | CO, PM.                                 |
| 20.11.65 NMAC .....  | Volatile Organic Compounds .....              | VOCs.                                   |
| 20.11.66 NMAC .....  | Process Equipment .....                       | PM.                                     |
| 20.11.67 NMAC .....  | Equipment, Emissions, Limitations .....       | SO <sub>2</sub> , NO <sub>x</sub> , PM. |
| 20.11.71 NMAC .....  | Municipal Solid Waste Landfills .....         | CO.                                     |
| 20.11.100 NMAC ..... | Motor Vehicle Inspection, Decentralized ..... | CO, PM, hydrocarbons.                   |
| 20.11.102 NMAC ..... | Oxygenated Fuels .....                        | CO.                                     |
| 20.11.103 NMAC ..... | Motor Vehicle Visible Emissions .....         | PM.                                     |

#### 8. Summary of Control Strategy Implementation

The EPA proposes to conclude that the County adequately addressed the status of control measures in its regional haze SIP, as required by the provisions under 40 CFR 51.309(d)(10)(i)(A) for the first implementation period. The County's progress report documented the status of all control measures included in its regional haze SIP and described additional measures that came into effect since the County's regional haze SIP was completed, including state regulations and various federal measures. All major control

measures were identified and the strategy behind each control was explained. The County included a summary of the implementation status associated with each control measure and quantified the benefits where possible. In addition, the progress report SIP adequately outlined the compliance timeframe for all controls

#### C. Emission Reductions From Control Strategies

The provisions under 40 CFR 51.309(d)(10)(i)(B) require the state to provide a summary of the emission reductions achieved in the state through

the control measures subject to the requirements under 40 CFR 51.309(d)(10)(i)(A). As mentioned previously, the County identified ammonium sulfate, particulate organic matter, and coarse mass as the largest contributors historically to visibility impairment at New Mexico's Class I areas for the initial round of regional haze SIPs. Many of the sources, however, that produce these visibility-impairing pollutants in New Mexico are natural, rather than anthropogenic in nature, and are not controllable. As a result, the New Mexico progress report focused on emission reductions from

<sup>29</sup> See the County's 2011 regional haze SIP (pages 56–58) and New Mexico's 2011 regional haze SIP (page 144) for ongoing implementation of federal mobile source regulations. The County regional haze SIP listed as a haze-control measure 20.11.104 NMAC, Emission Standards for New Motor Vehicles. This regulation was adopted in 2007 to implement California's clean car standards. At the time the regulation was adopted by New Mexico, the California standards were projected to substantially differ from federal motor vehicle emissions standards. Since that time, the California and federal programs for emissions standards for motor vehicles have become more aligned with

each other than was expected by New Mexico when it adopted the State Mobile Source Regulation. For example, in 2009, the EPA and the National Highway Traffic Safety Administration (NHTSA) proposed "regulatory convergence" with California on motor vehicle fuel economy standards. See 74 FR 49454 (September 28, 2009). This was subsequently adopted, starting with model years 2012–2016. 75 FR 25323 (May 7, 2010). Therefore, 20.11.104 NMAC is currently redundant and is not being implemented.

<sup>30</sup> See the County's 2011 regional haze SIP (page 59).

<sup>31</sup> See WRAP 2013 Summary Report, pages 3–11 to 3–20, 4–1 to 4–2, and 6–222 to 6–233.

<sup>32</sup> For more information on the WRAP modeling and assessment of road dust impacts, see section F of the County regional haze SIP (pages 69–71).

<sup>33</sup> The City of Albuquerque EHD also has delegated authority to enforce applicable federal standards related to particulate matter, as promulgated in 40 CFR Sections 60, 61, and 63.

<sup>34</sup> See the County Web site for a listing of the NMAC rules at [http://164.64.110.239/nmac/\\_title20/T20C011.htm](http://164.64.110.239/nmac/_title20/T20C011.htm).

point sources because they represent the anthropogenic sources in New Mexico.<sup>35</sup> The New Mexico report showed that these pollutants have mostly been contributing less to visibility impairment at New Mexico

Class I areas over time, and the anthropogenic point source emissions related to these pollutants have also been declining in areas of the state outside the County.<sup>36</sup> For comparison, in its progress report, the County took the same approach as

New Mexico and reported anthropogenic point source emission data (see table 3) from the County for NO<sub>x</sub>, SO<sub>2</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> and compared it to WRAP 2018 projections for the 2008–2013 time-period.

TABLE 3—THE COUNTY STATIONARY POINT SOURCE EMISSIONS COMPARED TO 2018 WRAP PROJECTIONS<sup>37</sup>

| Year                        | NO <sub>x</sub> (tpy) | SO <sub>2</sub> (tpy) | PM <sub>10</sub> (tpy) | PM <sub>2.5</sub> (tpy) |
|-----------------------------|-----------------------|-----------------------|------------------------|-------------------------|
| 2008 .....                  | 1,139                 | 57                    | 1,222                  | 239                     |
| 2011 .....                  | 1,120                 | 74                    | 186                    | 110                     |
| 2012 .....                  | 1,167                 | 132                   | 351                    | 116                     |
| 2013 .....                  | 1,401                 | 165                   | 323                    | 117                     |
| 2018 WRAP Projections ..... | 3,402                 | 1,612                 | 411                    | 23                      |

The County noted that pollutant emissions from the County have not impeded reductions in the rest of the state. SO<sub>2</sub> and NO<sub>x</sub> county emission trends have increased slightly since 2008 but have remained well below the WRAP 2018 projections for point sources and were just a fraction of the levels observed in the rest of the state (see table 4). PM<sub>10</sub> emission levels for

the County were below the WRAP 2018 projections while PM<sub>2.5</sub> levels were above the WRAP predictions. Although the PM<sub>2.5</sub> levels were above WRAP 2018 projections, PM emission levels from the County have decreased in a downward trend for both fine particulates and coarse mass since 2008. When comparing pollutant emission contributions of NO<sub>x</sub>, SO<sub>2</sub>, PM<sub>10</sub>, and

PM<sub>2.5</sub> from the County to the statewide national emission inventory (NEI), the County concluded that it is improbable that the County emissions have had significant impacts on nearby Class I areas. The reported point source amounts from the County remain low in comparison to those from the rest of the state as seen from the statewide NEI data in table 4.

TABLE 4—NEI POINT SOURCE EMISSION DATA FOR NEW MEXICO FOR 2002–2014<sup>38</sup>

| Year       | NO <sub>x</sub> (tpy) | SO <sub>2</sub> (tpy) | PM <sub>10</sub> (tpy) | PM <sub>2.5</sub> (tpy) |
|------------|-----------------------|-----------------------|------------------------|-------------------------|
| 2002 ..... | 95,493                | 36,392                | 6,558                  | 5,511                   |
| 2005 ..... | 72,707                | 18,532                | 3,611                  | 2,994                   |
| 2008 ..... | 57,461                | 22,868                | 2,953                  | 1,754                   |
| 2011 ..... | 47,497                | 19,987                | 2,545                  | 1,722                   |
| 2014 ..... | 42,623                | 12,535                | 3,091                  | 1,538                   |

The NEI data shows that the emission trend of each major contributor to visibility impairment in New Mexico has decreased significantly since 2002. NO<sub>x</sub> emissions have decreased by 55 percent and SO<sub>2</sub> emissions have decreased by 65 percent. PM reductions also reduced considerably from their NEI baseline totals (52% for PM<sub>10</sub> and 72% for PM<sub>2.5</sub>) and remain below the 2018 WRAP projections for New Mexico, although not especially pronounced.<sup>39</sup> A more-detailed breakdown of the distribution of each contributing pollutant species can be seen in section E of this report.

The EPA proposes to conclude that the County adequately addressed the requirements under 40 CFR 51.309(d)(10)(i)(B) with its summary of emission reductions of visibility impairing pollutants. Overall, the

County demonstrated the emission reductions achieved in the major contributing visibility impairing pollutants in the County for the first implementation period. Anthropogenic emissions of haze related pollutants from stationary point sources in the County are unlikely to reverse the larger, favorable statewide emission trends, because over time such local emissions have remained at a fraction of the levels seen in the rest of the state. Furthermore, such county emissions are under or close to the WRAP 2018 projections for those pollutants.<sup>40</sup>

#### D. Visibility Progress

The provisions under 40 CFR 51.309(d)(10)(i)(C) require that states with Class I areas provide the following information for the most impaired and least impaired days<sup>41</sup> for each area,

with values expressed in terms of five-year averages of these annual values: (1) Current visibility conditions; (2) the difference between current visibility conditions and baseline visibility conditions; and (3) the change in visibility impairment over the past five years. The County does not have any Class I areas within its borders; therefore, no visibility data is required to be analyzed for this element. In regard to New Mexico's Class I areas outside of the County, please note that when comparing baseline to current visibility conditions, the New Mexico progress report showed that New Mexico is currently on track, if not exceeding, the visibility impairment

<sup>35</sup> See the 2014 New Mexico Regional Haze Progress Report (page 7).

<sup>36</sup> See Figure 3.6 from the 2014 New Mexico Regional Haze Progress Report (page 15).

<sup>37</sup> See the 2016 County Regional Haze Progress Report (page 21).

<sup>38</sup> As reported in the online EPA Emissions Inventory System (EIS) Gateway database for point sources only.

<sup>39</sup> See Figure 3.6 from the 2014 New Mexico Regional Haze Progress Report (page 15).

<sup>40</sup> See the 2016 County Regional Haze Progress Report (pages 15–22).

<sup>41</sup> The most and least impaired days in the regional haze rule refers to the average visibility impairment (measured in deciviews) for the 20 percent of monitored days in a calendar year with the highest and lowest amount of visibility impairment, respectively, averaged over a five-year period (see 40 CFR 51.301).

emission reductions needed to achieve RPG's for 2018.<sup>42</sup>

#### E. Emissions Progress

The provisions under 40 CFR 51.309(d)(10)(i)(D) require an analysis tracking emission changes of visibility impairing pollutants from the state's sources by type or category over the past five years based on the most recent updated emission inventory. In its progress report SIP, the County presented WRAP emission inventories

for 2002, 2008, and 2011, as well as projected inventories for 2018, in accordance with the requirements of 40 CFR 51.309(d)(10)(i)(D). The pollutant inventories included SO<sub>2</sub>, NO<sub>x</sub>, NH<sub>3</sub>, VOCs, organic carbon, elemental carbon, coarse mass, and soil dust. The inventories were categorized for all major visibility-impairing pollutants under major source groupings either as anthropogenic or natural. The anthropogenic source categorization included point and area sources; on and

off-road mobile sources; area oil and gas; fugitive and road dust; and anthropogenic fire. The natural source categorization included natural fire, wind-blown dust, and biogenic sources. A breakdown of the total anthropogenic emissions for the County and state can be seen below in table 5. The table shows the percent apportionment of County emissions for each of the key haze-causing pollutants related to the rest of the state.

TABLE 5—COMPARISON OF COUNTY AND STATE ANTHROPOGENIC EMISSIONS TO WRAP 2018 PROJECTIONS <sup>43</sup>

| Pollutant species       | Inventory    | 2002 Total baseline emissions (tons/year) | 2008 Total emissions (tons/year) | 2011 Total emissions (tons/year) | WRAP 2018 projections (tons/year) |
|-------------------------|--------------|-------------------------------------------|----------------------------------|----------------------------------|-----------------------------------|
| SO <sub>2</sub> .....   | County ..... | 4,772 (10%)                               | 291                              | 1,250 (6%)                       | 13,770                            |
|                         | State .....  | 48,354                                    | 27,392                           | 21,624                           |                                   |
| NO <sub>x</sub> .....   | County ..... | 33,661 (11%)                              | 16,960                           | 14,760 (9%)                      | 26,819                            |
|                         | State .....  | 295,266                                   | 211,132                          | 168,008                          |                                   |
| NH <sub>3</sub> .....   | County ..... | 1,400 (4%)                                | 856                              | 682 (2%)                         | 1,683                             |
|                         | State .....  | 32,266                                    | 43,840                           | 37,071                           |                                   |
| VOCs .....              | County ..... | 25,573 (7%)                               | 19,137                           | 14,574 (7%)                      | 23,891                            |
|                         | State .....  | 344,077                                   | 268,792                          | 214,360                          |                                   |
| PM <sub>2.5</sub> ..... | County ..... | 2,229 (18%)                               | 4,112                            | 5,777 (7%)                       | 2,433                             |
|                         | State .....  | 12,573                                    | 61,587                           | 85,576                           |                                   |
| Coarse Mass .....       | County ..... | 16,387 (25%)                              | 36,982                           | 56,655 (7%)                      | 17,369                            |
|                         | State .....  | 66,096                                    | 511,327                          | 830,697                          |                                   |

The WRAP data showed that the percentage of County emissions contributing to the total state emissions has decreased for each pollutant species from the 2002 baseline to 2011. The WRAP emission inventories were previously identified in the SIP as reflecting overestimates of actual emissions in key source categories. Even so, there has not been a drastic, sudden spike in the percentages, which would be a cause for concern for visibility degradation at the Class I areas. The decreasing WRAP percentages are indicators that the County "conservative" emission estimates have improved throughout the first implementation period and are contributing less and less to visibility impairment at Class I areas outside of its borders from 2002–2011. The County concluded that it is unlikely that the County emissions had significant impacts on nearby Class I areas as a result. The County's contribution of emissions compared to the New Mexico emission inventory, as estimated by the WRAP, is six percent of the State SO<sub>2</sub> emissions; nine percent of the State NO<sub>x</sub> emissions; two percent of the State

NH<sub>3</sub> emissions; seven percent of the State VOC emissions; seven percent of the State PM<sub>2.5</sub> emissions; and seven percent of the State coarse mass emissions. These percentages are all down from their 2002 baseline levels. PM<sub>2.5</sub> and coarse mass 2011 total emissions are higher than the WRAP 2018 projections, but their decreasing percent contributions are better indicators of the progress made since emissions have increased statewide, yet their percentages have decreased from eighteen and 25 percent respectively, in 2002, to seven percent each in 2011.

The EPA is proposing to find that the County adequately addressed the requirements under 40 CFR 51.309(d)(10)(i)(D). The EPA concludes that the County presented an adequate analysis tracking emission trends for the key visibility impairing pollutants. The analysis provided the most recent period of approximately five years for which data was available in practical terms (2002–2008), and provided an additional update for 2011 that presented further information covering approximately two five-year periods (2002–2011). The trends indicate that it

was improbable that sources located within the County caused or contributed to visibility impairment in any Class I area located outside of the County. The emission trends declined within the County compared to 2002 baseline levels and the percent contributions related to the rest of the state have all continued to decline over time.

#### F. Assessment of Changes Impeding Visibility Progress

The provisions under 40 CFR 51.309(d)(10)(i)(E) require an assessment of whether any significant emission changes have occurred within the state over the five-year period since the SIP was submitted, and whether emission increases outside the state are affecting a Class I area within the state adversely. A "significant change" could be either a substantial unexpected increase in anthropogenic emissions that occurred over the five-year period or a significant expected reduction in anthropogenic emissions that did not occur in the analysis for the SIP.

The EPA proposes to conclude that the County adequately addressed the provisions under 40 CFR

<sup>42</sup> See table 2.1 of New Mexico Regional Haze Progress Report (page 5).

<sup>43</sup> The emission totals for the County are taken from the County regional haze progress report (tables 3.22–3.29). Emission totals for the entire

state of New Mexico are taken from the New Mexico Regional Haze progress report (tables 3.23–3.30). Detailed inventory descriptions for development of the WRAP Base02b, plan02c and plan02d inventories are available on the WRAP TSS Web

site <http://vista.cira.colostate.edu/TSS/Results/Emissions.aspx> and archived on the original WRAP Web site <http://www.wrapair.org/forums/ssjf/pivot.html>.

51.309(d)(10)(i)(E). The County does not have any Class I areas within its borders, so there is no requirement to assess impacts in the County from sources outside of its boundaries. Furthermore, the County sources do not impact any of the Class I areas outside of its borders, as was stated in the County's regional haze SIP revision, which the EPA approved on April 25, 2012.<sup>44</sup> In conjunction with that previous action, the EPA's current analysis of emission reductions to meet the provisions of 40 CFR

51.309(d)(10)(i)(B) and 40 CFR 51.309(d)(10)(i)(D) show that no "significant changes" in emissions within the County have occurred to impede visibility improvement or have adversely affected the nine Class I areas in New Mexico.<sup>45</sup> Emission trends for the key visibility impairing pollutants were confirmed to be decreasing from the baseline to 2018 by statewide NEI data and reported County emissions. Additionally, the WRAP data showed that emissions from the County have remained at the same percentage levels over time or decreased relative to emissions from elsewhere in the state.

#### *G. Assessment of Current Strategy To Meet RPGs*

The provisions under 40 CFR 51.309(d)(10)(i)(F) require an assessment of whether the current regional haze SIP is sufficient to enable the state, or other states, to meet the RPGs for Class I areas affected by emissions from the state. The County does not contain any Class I areas, and emissions from the County were found to not impact any Class I areas outside of its borders. As discussed previously, the NEI data showed that the total emissions of each major contributor to visibility impairment in New Mexico has decreased significantly since 2002. The total County emissions have remained at a fraction of the levels seen in the rest of the state and are under or close to the WRAP 2018 RPGs when looking at the cumulative anthropogenic emissions.

The County provided a breakdown showing whether or not every key pollutant in each source category was meeting its 2018 RPGs for annual emissions.<sup>46</sup> Of the 56 individual RPGs for the County, 42 were either being met or referred to pollutants that showed

declining emissions since 2002.

Fourteen of the County goals were not yet being met as of the 2011 WRAP inventory, but nine of those annual goals showed reported emission levels less than 200 tpy, and one was just under 500 tpy. Those ten goals were associated with point sources and on and off road mobile source categories. The County concluded that those ten reported emissions were unlikely to impede New Mexico's progress toward achieving statewide goals for emissions and visibility since the emission levels represented a negligible portion of total statewide emissions.

The four remaining annual emission goals that were not being met covered coarse mass, organic carbon, and PM<sub>2.5</sub> pollutants. The increased contributions from these pollutants were associated with fugitive/road dust and area (non-point) source categories. Annual emissions with higher levels of organic matter, elemental carbon, PM<sub>2.5</sub> and coarse mass with a lower contribution from ammonium sulfate are heavily dominated from wildfires and particulate matter. High coarse mass was measured during the spring, which was indicative of high-wind events that occurred during the late winter and spring months in New Mexico. Wildfires or high-wind events might again affect annual emissions in the 2018 timeframe, but the County showed that it is meeting nearly all of its annual emission goals even with experienced annual emission increases from natural events that still have not hindered New Mexico from meeting its RPGs beyond the County borders. The County expects further reduction of SO<sub>2</sub> and NO<sub>2</sub> emissions, the primary pollutant species associated with anthropogenic sources, to continue their broad declines in the same areas.

The EPA proposes to conclude that the County has addressed 40 CFR 51.309(d)(10)(i)(F) because its current regional haze SIP is sufficient to enable the state of New Mexico and other nearby states to meet their RPGs, particularly as the County was not identified as contributing to any impairment in such Class I areas. The fairly constant proportion of County emissions compared to the rest of the state are negligible. In spite of natural events, the County showed that it is meeting nearly all of its annual emission goals and the annual emission increases from natural events still have not hindered New Mexico from meeting its RPGs beyond the County borders.

#### *H. Review of Visibility Monitoring Strategy*

The provisions under 40 CFR 51.309(10)(i)(G) require a review of a state's visibility monitoring strategy for visibility impairing pollutants and an assessment of whether any modifications to the strategy are necessary. In its progress report SIP, the County stated that there are no Class I areas within its boundaries, and therefore it was not required to fulfill this provision. The EPA proposes to conclude that the County is exempt from addressing the requirements of 40 CFR 51.309(10)(i)(G), as that requirement is solely for states with Class I areas in their borders.<sup>47</sup>

#### *I. Determination of Adequacy of Existing Regional Haze Plan*

Under 40 CFR 51.309(d)(10)(ii), states are required to submit, at the same time as the progress report SIP, a determination of the adequacy of their existing regional haze SIP and to take one of four possible actions based on information in the progress report. 40 CFR 51.309(d)(10)(ii) requires states to take one of the following actions:

(1) Submit a negative declaration to the EPA that no further substantive revision to the State's existing regional haze SIP is needed.

(2) If the State determines that the implementation plan is or may be inadequate to ensure reasonable progress due to emissions from sources in another state(s) which participated in a regional planning process, the State must provide notification to the EPA and to the other state(s) which participated in the regional planning process with the states. The State must also collaborate with the other state(s) through the regional planning process for developing additional strategies to address the plan's deficiencies.

(3) Where the State determines that the implementation plan is or may be inadequate to ensure reasonable progress due to emissions from sources in another country, the State shall provide notification, along with available information, to the Administrator.

(4) If the State determines that the implementation plan is or may be inadequate to ensure reasonable progress due to emissions from sources within the State, then the State shall revise its implementation plan to

<sup>44</sup> See 77 FR (24768, 24791).

<sup>45</sup> Changes in wildfires are not a "change" to report under 51.309(d)(10)(i)(E) per EPA guidance, *General Principles for the 5-Year Regional Haze State Progress Reports for the Initial Regional Haze State Implementation Plans* (page 15).

<sup>46</sup> Shown in tables 3.22–3.29 of the County Regional Haze Progress Report.

<sup>47</sup> The New Mexico progress report concluded (pages 46–47) that no changes in the state's visibility monitoring strategy are needed because the IMPROVE network has continued to provide adequate monitoring data to support implementation of the RHR.

address the plan's deficiencies within one year.

The City of Albuquerque and Bernalillo County, New Mexico has provided the information required under 40 CFR 51.309(d)(10)(i) in the five-year progress report. Based upon this information, the County stated in its progress report SIP that it believes that the current Section 309 and Section 309(g) regional haze SIPs are adequate to meet the State's 2018 RPGs and require no further revision at this time. Thus, the EPA has received a negative declaration from the City of Albuquerque and Bernalillo County, NM.

#### IV. The EPA's Proposed Action

The EPA is proposing to approve the City of Albuquerque and Bernalillo County, New Mexico's regional haze five-year progress report SIP revision (submitted June 24, 2016) as meeting the applicable regional haze requirements set forth in 40 CFR 51.309(d)(10). The EPA is proposing to approve the City of Albuquerque and Bernalillo County, New Mexico's determination that the current regional haze SIP is adequate to meet the State's 2018 RPGs.

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), 13563 (76 FR 3821, January 21, 2011), and 13771 (82 FR 9339, February 2, 2017);
- 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). In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Best Available Retrofit Technology, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Regional haze, Sulfur dioxide, Visibility, Volatile organic compounds.

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

Dated: September 26, 2017.

**Samuel Coleman,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 2017-21006 Filed 9-29-17; 8:45 am]

**BILLING CODE 6560-50-P**

## SURFACE TRANSPORTATION BOARD

### 49 CFR Part 1102

[Docket No. EP 739]

### Ex Parte Communications in Informal Rulemaking Proceedings

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** In this decision, the Surface Transportation Board (the Board)

proposes to modify its regulations to permit, subject to disclosure requirements, ex parte communications in informal rulemaking proceedings. The Board also proposes other changes to its ex parte rules that would clarify and update when and how interested persons may communicate informally with the Board regarding pending proceedings other than rulemakings. The intent of the proposed regulations is to enhance the Board's ability to make informed decisions through increased stakeholder communications while ensuring that the Board's record-building process in rulemaking proceedings remains transparent and fair.

**DATES:** Comments are due by November 1, 2017. Replies are due by November 16, 2017.

**ADDRESSES:** Comments and replies may be submitted either via the Board's e-filing format or in paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at "[www.stb.gov](http://www.stb.gov)" at the "E-FILING" link. Any person submitting a filing in paper format should send an original and 10 paper copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 739, 395 E Street SW., Washington, DC 20423-0001. Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

#### FOR FURTHER INFORMATION CONTACT:

Jonathon Binet at (202) 245-0368.

Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** The Board's current regulations at 49 CFR 1102.2 generally prohibit most informal communications between the Board and interested persons concerning the merits of pending Board proceedings. These regulations require that communications with the Board or Board staff regarding the merits of an "on-the-record" Board proceeding not be made on an ex parte basis (*i.e.*, without the knowledge or consent of the parties to the proceeding). *See* 49 CFR 1102.2(c); 49 CFR 1102.2(a)(3). The current regulations detail the procedures required in the event an impermissible communication occurs and the potential sanctions for violations. *See* 49 CFR 1102.2(e), (f).

The Board's predecessor agency, the Interstate Commerce Commission (ICC), determined that the general prohibition on ex parte communications in

proceedings should include the informal rulemaking proceedings the Board uses to promulgate regulations.<sup>1</sup> See *Revised Rules of Practice*, 358 I.C.C. 323, 345 (1977) (“[E]x parte communication during a rulemaking is just as improper as it is during any other proceeding. The Commission’s decisions should be influenced only by statements that are a matter of public record.”). Accordingly, it has long been the agency’s practice to prohibit meetings with individual stakeholders on issues that are the topic of pending informal rulemaking proceedings.

The Board has determined that it is appropriate to revisit the agency’s strict prohibition on ex parte communications in informal rulemaking proceedings for several reasons. First, the case law governing the propriety of ex parte communications in informal rulemakings has evolved, and agencies now have more flexibility to engage in such communications and establish procedures to govern them. Second, a recent consensus recommendation of the Administrative Conference of the United States (ACUS), the body charged by Congress with recommending agency best practices, encourages greater use of ex parte communications in informal rulemaking proceedings so long as agencies devise appropriate safeguards. Third, the Board’s own experiences in two recent rulemaking proceedings in which the Board waived its ex parte prohibitions to permit stakeholder meetings have demonstrated that informal meetings between the Board and stakeholders can aid the Board’s decision-making process while still being conducted in a transparent and fair manner.

The Board has also determined that certain other aspects of its ex parte regulations that apply to proceedings other than rulemakings could be clarified and updated to reflect current practices and better guide stakeholders and agency personnel.

### Case Law Developments Regarding Ex Parte Communications in Informal Rulemaking Proceedings

In the late 1970s, several court decisions expressed the view that ex parte communications in informal

rulemaking proceedings were inherently suspect.<sup>2</sup> Courts expressed concerns that the written administrative record did not reflect the possible “undue influence” exerted by those stakeholders who had engaged in ex parte communications, *HBO v. FCC*, 567 F.2d at 54, and that ex parte communications “violate[d] the basic fairness of a hearing which ostensibly assures the public a right to participate in agency decision making,” foreclosing effective judicial review, *National Small Shipments Traffic Conference v. ICC*, 590 F.2d 345, 351 (D.C. Cir. 1978). At the same time, however, other court decisions were more tolerant of ex parte communications in informal rulemaking proceedings, so long as the proceeding was not quasi-adjudicative in nature and the process remained fair.<sup>3</sup> The ICC determined that its ex parte prohibition should apply equally to rulemaking proceedings. *Revised Rules of Practice*, 358 I.C.C. at 345.

Despite these initial misgivings by the courts, the D.C. Circuit’s 1981 decision in *Sierra Club v. Costle*, 657 F.2d 298 (D.C. Cir. 1981), significantly clarified and liberalized treatment of this issue. That case involved an informal rulemaking conducted by the Environmental Protection Agency pursuant to the Clean Air Act, in which the agency had received numerous written and oral ex parte communications after the close of the comment period. The court considered the “timing, source, mode, content, and the extent of . . . disclosure” of ex parte communications received after the close of the comment period to determine whether those communications violated the Clean Air Act or due process. *Id.* at 391. The court noted that the Clean Air Act itself did not prohibit ex parte communications, although it did require documents of “central relevance” be

placed on the public docket.<sup>4</sup> *Id.* at 397. Because the agency had docketed most of the ex parte communications and none of the comments were docketed “so late as to preclude any effective public comment,” the court held that the agency satisfied its statutory requirements. *Id.* at 398.

As for constitutional due process, the court in *Sierra Club* found there was “questionable utility” in insulating the decisionmaker in informal rulemakings (in contrast to quasi-judicial and quasi-adjudicatory rulemakings) from ex parte communications because the decisionmaker in such cases is not resolving “conflicting private claims to a valuable privilege.” *Id.* at 400. The court declined to prohibit ex parte communications in such rulemaking on due process grounds, and even held that not all ex parte communications must necessarily be docketed (implicitly concluding that whether such communications require docketing depends on case-specific circumstances). *Id.* at 402–04.

Today, *Sierra Club* is considered the most recent influential decision on ex parte communications in informal rulemakings and is often cited by courts for the proposition that ex parte communications in informal agency rulemaking are generally permissible.<sup>5</sup>

### 2014 ACUS Recommendation

In 2014, ACUS provided best-practices guidance to agencies that a general prohibition on ex parte communications in informal rulemaking proceedings is neither required nor advisable. *Ex Parte Commc’ns in Informal Rulemaking Proceedings*, 79 FR 35,988, 35,994 (June 25, 2014). ACUS examined both the potential benefits and risks of ex parte communications in informal rulemaking proceedings. Regarding potential

<sup>4</sup> The court also made clear that the APA does not impose any prohibition of, or requirements related to, ex parte communications in informal rulemaking. *Sierra Club*, 657 F.2d at 402 (noting that Congress declined to extend the ex parte prohibition applicable to formal rulemakings to informal rulemakings despite being urged to do so).

<sup>5</sup> See, e.g., *Tex. Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313, 327 (5th Cir. 2001) (“Generally, ex parte contact is not shunned in the administrative agency arena as it is in the judicial context. In fact, agency action often demands it.”); *Ammex, Inc. v. United States*, 23 Ct. Int’l Trade 549, 569 n.16 (1999) (noting that the decision at issue “constitutes an exercise of ‘informal’ rulemaking under the [APA] and, as such, is not subject to the prohibition on ex parte communications set forth in 5 U.S.C. 557(d)(1) (1994)”); *Portland Audubon Soc. v. Endangered Species Comm.*, 984 F.2d 1534, 1545–46 (9th Cir. 1993) (“The decision in [*Sierra Club*] that the contacts were not impermissible was based explicitly on the fact that the proceeding involved was informal rulemaking to which the APA restrictions on ex parte communications are not applicable.”).

<sup>1</sup> The Administrative Procedure Act (APA), 5 U.S.C. 551–559, governs two categories of agency rulemaking: Formal and informal. Formal rulemaking is subject to specific procedural requirements, including hearings, presiding officers, and a strict ex parte prohibition. See 5 U.S.C. 556–57. But most federal agency rulemakings, including the Board’s, are informal rulemaking proceedings subject instead to the less restrictive “notice-and-comment” requirements of 5 U.S.C. 553.

<sup>2</sup> See, e.g., *Home Box Office v. Fed. Commc’ns Comm’n (HBO v. FCC)*, 567 F.2d 9, 51–59 (D.C. Cir. 1977) (finding that ex parte communications that occurred after the notice of proposed rulemaking (NPRM) violated the due process rights of the parties who were not privy to the communications); see also *Sangamon Valley Television Corp. v. United States*, 269 F.2d 221, 224 (D.C. Cir. 1959) (finding that undisclosed ex parte communications between agency commissioners and a stakeholder were unlawful because the informal rulemaking involved “resolution of conflicting private claims to a valuable privilege, and that basic fairness requires such a proceeding to be carried on in the open”).

<sup>3</sup> See, e.g., *Action for Children’s Television v. Fed. Commc’ns Comm’n*, 564 F.2d 458 (D.C. Cir. 1977) (upholding the agency’s decision not to issue proposed rules and finding no APA violation for ex parte discussions where the agency provided a meaningful opportunity for public participation and the proceeding did not involve competing claims for a valuable privilege).

benefits, ACUS concluded that such communications

convey a variety of benefits to both agencies and the public. . . . These meetings can facilitate a more candid and potentially interactive dialogue of key issues and may satisfy the natural desire of interested persons to feel heard. In addition, if an agency engages in rulemaking in an area that implicates sensitive information, ex parte communications may be an indispensable avenue for agencies to obtain the information necessary to develop sound, workable policies.

*Id.* But ACUS also acknowledged that fairness issues can arise if certain groups have, or are perceived to have, “greater access to agency personnel than others” and that “[t]he mere possibility of non-public information affecting rulemaking creates problems of perception and undermines confidence in the rulemaking process.” *Id.*

In balancing these competing considerations, ACUS urged agencies to consider placing few, if any, restrictions on ex parte communications that occur *before* an NPRM because communications at this stage are less likely to cause harm and more likely to “help an agency gather essential information, craft better regulatory proposals, and promote consensus building among interested persons.” *Id.* However, ACUS recommended that agencies establish clear procedures ensuring that all ex parte communications occurring *after* an NPRM, whether planned or unplanned, be disclosed. Written communications should be placed in the docket, and oral communications should be summarized and placed in the docket. Written summaries of oral communications should include the date, location, and participants of any meeting, as well as “adequate disclosure” of the communication (prepared by agency staff or private parties, with the ultimate responsibility for adequacy falling on the agency). *Id.* at 35,995. ACUS also suggested that agencies exercise special care regarding communications that contain “any significant new information that its decisionmakers choose to consider or rely upon.” *Id.*

### Board Rationale for Revising its Ex Parte Regulations

Starting in 2015, the Board began to look at the possibility of conducting ex parte meetings in order to gain even more stakeholder input in the informal rulemaking process. As a result, the Board waived the ex parte prohibition to permit Board Members or designated Board staff to participate in ex parte communications in two

proceedings.<sup>6</sup> See *Reciprocal Switching*, EP 711 (Sub-No. 1), slip op. at 28–29 (STB served July 27, 2016);<sup>7</sup> *U.S. Rail Serv. Issues—Performance Data Reporting* (U.S. Rail Serv. Issues Nov. 2015 Decision), EP 724 (Sub-No. 4), slip op. at 2–3 (STB served Nov. 9, 2015). In both proceedings, the Board established when ex parte meetings could be scheduled and specific instructions for the scheduling and disclosure of the meetings. The Board has required written meeting summaries be prepared and docketed, although it has taken slightly different approaches in each proceeding. In EP 724 (Sub-No. 4), where stakeholder meetings were held with Board staff (rather than Board Members), the meeting summaries were prepared by Board staff and placed in the rulemaking docket. (See, e.g., Summary of Ex Parte Meeting between CSX Transp., Inc. & STB Staff, Dec. 16, 2015, *U.S. Rail Serv. Issues—Performance Data Reporting*, EP 724 (Sub-No. 4).) In comparison, in EP 711 (Sub-No. 1), where stakeholder meetings are being held with individual Board Members, the Board has directed the parties requesting the ex parte meetings to prepare the written summaries, which are provided, along with any handouts, to the office of the Board Member with whom the party met within two business days of the meeting and then placed in the rulemaking docket within 14 days of the meeting. (See, e.g., Summary of Ex Parte Meeting Between INEOS USA LLC & STB Member, Feb. 7, 2017, *Reciprocal Switching*, EP 711 (Sub-No. 1).) In both proceedings, the Board has ensured that the meeting summaries contain the date of the meeting and a list of attendees; a summary of the arguments, information, and data presented; and a copy of any handout given or presented to the Board. See *Reciprocal Switching*, EP 711 (Sub-No. 1), slip op. at 29; see also *U.S. Rail Serv. Issues Nov. 2015 Decision*, EP 724 (Sub-No. 4), slip op. at 3. The Board has also ensured that meeting summaries are submitted and docketed promptly. See *Reciprocal Switching*, EP

711 (Sub-No. 1), slip op. at 28–29 (requiring meetings summaries to be submitted by parties within two business days of the meeting and noting that the Board expects to docket the meeting summaries within 14 days of the meeting); see also *U.S. Rail Serv. Issues—Performance Data Reporting*, Docket No. EP 724 (Sub-No. 4) (meeting summaries prepared by Board staff were generally docketed within 14 days of a meeting).

Many stakeholders in these proceedings have expressed appreciation for the opportunity to meet with Board Members or Board staff regarding the merits of the proposed rules. See, e.g., Summary of Ex Parte Meeting Between Packaging Corp. of Am. & Acting Chairman Begeman at 3, Aug. 3, 2017, *Reciprocal Switching*, EP 711 (Sub-No. 1) (“The meeting concluded with . . . an acknowledgement that the ex parte meeting process on EP 711 has allowed for valuable input from shippers and their perspective on the need for a competitive rail-pricing environment that ultimately serves the public interest.”); Summary of Ex Parte Meeting Between CSX Transp. & STB Staff at 1, Dec. 16, 2015, *U.S. Rail Serv. Issues—Performance Data Reporting*, EP 724 (Sub-No. 4) (“CSXT hopes that there will be additional opportunities for informal discussions on Board initiatives in the future and noted that it has many informal discussions with the Federal Railroad Administration, which also does rulemakings.”). In these meetings, parties have been able to respond directly to questions from Board staff on the feasibility and utility of certain aspects of the Board’s proposal. As a result of the written comments and ex parte meetings in Docket No. EP 724 (Sub-No. 4), the Board issued a supplemental NPRM significantly revising its proposed rules. See *U.S. Rail Serv. Issues—Performance Data Reporting*, EP 724 (Sub-No. 4), slip op. at 3 (STB served Apr. 29, 2016). Because the ex parte meetings in that proceeding better informed the agency about the often highly technical service reporting issues that were most important to commenters, the Board believes that the ultimate final rule was a better reflection of the needs and concerns of all stakeholders. The Board has every reason to expect that the ongoing meetings in EP 711 (Sub-No. 1) will prove similarly helpful and informative. The Board believes its experiences in these two cases indicate a strong desire among stakeholders to interact with the Board more informally.

Both the developments in case law related to ex parte communications and

<sup>6</sup> Greater use of ex parte meetings in Board rulemaking proceedings was also a topic of the U.S. Senate Committee on Commerce, Science, and Transportation’s August 11, 2016 hearing. See Freight Rail Reform: Implementation of the STB Reauthorization Act of 2015: Field Hearing Before the S. Comm. on Commerce, Sci., & Transp., 114th Cong. 32, 35, 46, 50–52, 57, 69, 72 (2016), <https://www.gpo.gov/fdsys/pkg/CHRG-114shrg23228/pdf/CHRG-114shrg23228.pdf>.

<sup>7</sup> In the Board’s July 27, 2016 decision, which embraced *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, Docket No. EP 711, the Board terminated the proceeding in Docket No. EP 711, and all meetings with Board Members are taking place under *Reciprocal Switching*, Docket No. EP 711 (Sub-No. 1).

the Board's own experiences waiving its ex parte prohibitions in the two recent proceedings discussed above provide the Board with ample support to re-examine and update its ex parte regulations to permit and govern ex parte communications in informal rulemaking proceedings. The Board's removal of its prohibition on ex parte communications would also be consistent with the more liberal approach to ex parte communications in informal rulemakings allowed under *Sierra Club*. First, the Board's informal rulemaking proceedings are the type of proceedings in which the court in *Sierra Club* found ex parte communications are not prohibited on strict due process grounds. Specifically, the Board's informal rulemakings are legislative in nature, in that they focus on policy or law to be implemented in the future and are based on various factors designed to determine what prospective rule would be most beneficial. *See U.S. Rail Serv. Issues Nov. 2015 Decision*, EP 724 (Sub-No. 4), slip op. at 2 n.4. The Board's informal rulemaking proceedings thus generally do not involve competing claims to a specific "valuable privilege," which the court in *Sierra Club* warned would trigger due process concerns.<sup>8</sup> Accordingly, the strict due process considerations that motivate blanket ex parte restrictions in other cases would not apply to the Board's informal rulemaking proceedings.

Second, as in *Sierra Club*, the Board's authorizing statute creates no procedural impediments regarding ex parte communications in informal rulemaking proceedings. The statutory authority for most of the Board's rules, the Interstate Commerce Act, does not itself prohibit ex parte communications. Indeed, 49 U.S.C. 11324(f) explicitly *permits* ex parte communications in major rail merger proceedings, subject to prompt placement in the public docket of the written communication or a summary of the oral communication. And 49 U.S.C. 11123 exempts the Board from the requirements of the APA altogether in emergency situations requiring immediate Board action to provide relief for service inadequacies.

In determining whether and to what extent to permit ex parte communications in informal rulemaking proceedings, the Board must appropriately balance the benefits of allowing ex parte communications with institutional concerns regarding transparency and fairness. The benefits

are evident: Ex parte communications would provide the Board with the opportunity to informally engage stakeholders, gather information, and receive the benefit of industry data and stakeholder expertise. Such informal discussions would help ensure the Board thoroughly understands stakeholder perspectives and would ultimately aid the Board in developing the most appropriate regulations. Ex parte communications would also allow stakeholders to further explain or clarify data and arguments submitted in written comments and would enable the Board to explore the nuances of those arguments by asking follow-up questions, as needed. As noted in *Sierra Club*, government administrators must be open, accessible, and amenable to the needs and ideas of the public. *Sierra Club*, 657 F.2d at 400–01. Indeed, the Board's policy decisions in informal rulemaking proceedings are guided by stakeholder input, and, as the Board has experienced in Docket Nos. EP 711 (Sub-No. 1) and EP 724 (Sub-No. 4), ex parte meetings provide a meaningful and direct way for stakeholders to share their views and for the Board Members and/or Board staff to ask specific questions, thus promoting an increased dialogue about particular issues.

The Board recognizes that ex parte communications can also raise concerns, including that decisionmakers may be influenced by communications made in private; that interested persons may be unable to reply effectively to information presented in ex parte communications; and that certain parties may be perceived to have greater access to the agency. *See infra* at 7 (discussing ACUS report). However, the Board believes that these concerns can be remedied by implementing safeguards to ensure that the public record adequately reflects the evidence and argument provided during the ex parte meetings and that parties have an opportunity to respond. Such safeguards would include requiring the disclosure of any written or oral ex parte communication in a meeting summary that would be posted to the public docket and providing parties an opportunity to submit written comments in response to the summaries at the conclusion of the ex parte meeting period. Moreover, the Board could address concerns regarding the accessibility of the process by permitting ex parte meetings via telephone or video-conferencing.<sup>9</sup>

With safeguards in place, the Board believes that the ability to communicate directly with stakeholders in informal rulemaking proceedings would enhance the Board's deliberations and better enable it to issue the most appropriate regulations in accordance with a transparent and fair record-building process. Accordingly, the Board proposes to revise its ex parte regulations to permit ex parte communications in informal rulemaking proceedings, but also to implement procedural safeguards that ensure the rulemaking process remains fair and transparent. Moreover, the Board seeks to clarify certain other aspects of its ex parte regulations that apply to proceedings other than informal rulemakings, to ensure that they provide clear guidance on how stakeholders can communicate with Board Members and staff during such proceedings.

### The Proposed Rule

The Board proposes to make the following modifications, organized here by topic, to the Board's regulations at 49 CFR 1102.2 regarding ex parte communication. The Board proposes changes to the definitions set out in paragraph (a) of the regulations; changes to communications that are and are not prohibited; and changes to the procedures required upon receipt of prohibited communications. The Board also proposes new rules governing ex parte communications in informal rulemaking proceedings. The Board invites comment on the proposed revisions.

### Changes to Definitions

The Board proposes to modify paragraph (a) to reflect that the revised regulations would govern, rather than prohibit all, ex parte communications. Under the existing regulations, ex parte communications are prohibited in "on-the-record proceedings." The term "on-the-record proceeding" is defined in existing § 1102.2(a)(1) to include formal rulemaking and adjudicatory proceedings under §§ 556–57 of the APA (5 U.S.C. 556–57), as well as any matter required by the Constitution, statute, Board rule, or by decision to be decided solely on the record made in a Board proceeding. As discussed above, informal rulemaking proceedings are not expressly covered by this definition.

site—would be able to contact the Board's Rail Customer and Public Assistance Program (RCPA). Among other things, RCPA assists Board stakeholders seeking guidance in complying with Board decisions and regulations. Matters brought to RCPA are handled informally by Board staff who are not reasonably expected to participate in Board decisions, and guidance offered through RCPA is not binding on the agency.

<sup>8</sup> Claims involving specific valuable privilege are more typically resolved in Board adjudications, such as rate reasonableness or unreasonable practice cases, where ex parte communications would remain prohibited.

<sup>9</sup> Any parties in need of assistance understanding or complying with the Board's ex parte regulations—for example, locating example summaries from prior cases on the Board's Web

Rather, the ICC, in effect, extended the ex parte prohibition to informal rulemaking proceedings in *Revised Rules of Practice*, 358 I.C.C. at 345. The proposed regulations, however, would essentially reverse this extension by no longer completely prohibiting ex parte communications in informal rulemaking proceedings, while also ensuring any ex parte communications post-NPRM would be disclosed in a transparent manner.

To accomplish this, the Board proposes to add two new definitions to § 1102.2(a): “informal rulemaking proceeding” and “covered proceedings.” “Informal rulemaking proceeding” would include any proceeding to issue, amend, or repeal rules pursuant to 49 CFR part 1110 and 5 U.S.C. 553. “Covered proceedings” would encompass both on-the-record proceedings and informal rulemaking proceedings following the issuance of an NPRM.<sup>10</sup> As discussed in more detail below, ex parte communications would be permitted in informal rulemaking proceedings (subject to disclosure requirements for those communications occurring post-NPRM), but would remain prohibited in on-the-record proceedings.

The proposed language would also redefine an ex parte communication as “an oral or written communication that concerns the merits or substantive outcome of a pending proceeding; is made without notice to all parties and without an opportunity for all parties to be present; and could or is intended to influence anyone who participates or could reasonably be expected to participate in the decision.” This new definition would alter the existing definition in two significant ways. First, the existing concept that communications are only ex parte if made “by or on behalf of a party” would be removed. The Board proposes eliminating this phrase because communications that concern the merits or substantive outcome of a proceeding, even if they are not made by a formal party to the proceeding or on behalf of such a party, could nonetheless have the potential to impact a proceeding. Second, the proposed new definition would remove the suggestion that an ex parte communication that is made with the “consent of any other party” could be permissible. The Board believes it is more appropriate for the Board, rather

than other parties, to determine whether to permit ex parte communications.<sup>11</sup>

These revisions would not change the generally understood concept that certain communications, by their very nature, do not concern the merits or substantive outcome of pending proceedings or are not made to Board Members or staff who are reasonably expected to participate in Board decisions. For example, communications that do not raise issues include communications about purely procedural issues; public statements or speeches by Board Members or staff that merely provide general and publicly available information about a proceeding; communications that solely concern the status of a proceeding; and communications with the Board’s RCPA.

#### *Communications That Are Not Prohibited*

Paragraph (b), as currently written, permits certain types of communications that do not appear to threaten transparency or fairness but that may also have an impact on a proceeding. Such communications include information from the news media and facts or contentions that are general in nature. See 49 CFR 1102.2(b)(2), (3). The Board proposes to amend this paragraph to include additional categories of ex parte communications that are permissible and would not be subject to the proposed disclosure requirements of proposed paragraphs (e) and (g), discussed below. Proposed additions to this category include communications related to an informal rulemaking proceeding prior to the issuance of an NPRM; communications related to the Board’s implementation of the National Environmental Policy Act and related environmental laws; and communications concerning judicial review of a matter that has already been decided by the Board made between parties to the litigation and the Board or Board staff involved in that litigation.

Regarding ex parte communications prior to the issuance of an NPRM, the proposed rules would allow for

*unconstrained* ex parte communications in informal rulemaking proceedings until an NPRM is issued. The Board believes that free-flowing communications with stakeholders should be encouraged during the exploratory, pre-NPRM phase of a rulemaking proceeding. Some rulemaking proceedings have been initiated by the Board with a general request for comments or an informational hearing designed to allow the Board to obtain preliminary stakeholder input regarding certain broad topics. See *R.R. Revenue Adequacy*, EP 722 (STB served April 2, 2014); *Review of Rail Access & Competition Issues—Renewed Pet. of the W. Coal Traffic League*, EP 575 (STB served June 2, 2006); see also *Review of the STB’s Gen. Costing Sys.*, EP 431 (Sub-No. 3) (STB served Apr. 6, 2009). When such preliminary or general decisions have been issued, the applicability of the Board’s ex parte prohibitions has been unclear, and this ambiguity has caused confusion. The Board proposes to clarify that, during the pre-NPRM phase of an informal rulemaking proceeding, it is not necessary to limit (or subject to strict disclosure requirements) informal communications with individual stakeholders regarding such general topics because, as noted by ACUS, pre-NPRM ex parte communications do not implicate administrative or due process concerns. Information gathered in a pre-NPRM ex parte meeting that the Board incorporates or relies upon in its proposal should be evident in the NPRM itself, and the public would have the opportunity to examine and respond to that information.<sup>12</sup> For these reasons, the Board believes that such communications, which could assist the Board in the preliminary stages of a rulemaking proceeding, should be encouraged.

Additionally, communications related to environmental laws and communications regarding judicial

<sup>10</sup> Accordingly, the Board proposes to replace references to “on-the-record proceedings” with “covered proceedings,” as appropriate, throughout § 1102.2.

<sup>11</sup> The Board also proposes some modifications for syntax purposes. In particular, to reflect the revised definition of “ex parte communication,” which incorporates the fact that ex parte communications “concern[] the merits or the substantive outcome of a pending proceeding,” the Board proposes to remove the phrase “concerning the merits of a proceeding” (and the like) from the remainder of § 1102.2. For example, where existing paragraph (c)(2) states “knowingly entertain any ex parte communication concerning the merits of a proceeding,” the proposed rules would only state “knowingly entertain any ex parte communication.”

<sup>12</sup> For example, in Docket No. EP 733, *Expediting Rate Cases*, Board staff held informal meetings with stakeholders in April 2016 to explore ideas on how the Board could expedite rate reasonableness cases. The goal of the informal discussions was to enhance Board staff’s perspective on strategies and pathways to expedite and streamline rate cases. The Board utilized feedback received during the informal meetings to generate ideas, which were incorporated into an advance notice of proposed rulemaking. *Expediting Rate Cases*, EP 733, slip op. at 2 (STB served June 15, 2017); see also *id.* at 3 (proposing standardized discovery requests in light of statements by several stakeholders in the informal meetings that standardizing discovery would help expedite rate cases and reduce the number of disputes). Parties were permitted to comment on the details of the proposal, including those stemming from feedback gathered in the informal meetings. *Id.* at 1.

review of matters already decided by the Board are being added to codify existing and well-accepted practices. The Board's environmental review process "is necessarily informal and all-inclusive and depends on cooperative consultations with the [license] applicant as well as other agencies and other interested parties with expertise, so that all possible environmental information, issues, and points of view will come before the agency." *San Jacinto Rail Ltd. Constr. Exemption & BNSF Operation Exemption—Build-Out to the Bayport Loop Near Houston, Harris Cty., Tex.*, FD 34079, slip op. at 3 (STB served Dec. 3, 2002) (finding that a letter sent as part of the environmental review process did not constitute an ex parte communication). Accordingly, the Board proposes to clarify that communications related solely to the preparation of environmental review documents, such as Environmental Impact Statements and Environmental Assessments, are not ex parte communications. In addition, once a Board decision has been appealed in court, it is both necessary and proper for there to be communication between the agency and other litigants concerning litigation issues.

Lastly, paragraph (b)(1) of the current regulation permits any communication "to which all the parties to the proceeding agree." The Board proposes to modify the existing regulations to remove this language because, as noted above, the Board believes it is more appropriate for the Board, rather than other parties, to determine whether to permit ex parte communications.

#### *Communications That Are Prohibited*

The Board proposes to make changes in paragraph (c) that either clarify the existing regulations or modify them to reflect that some ex parte communications, such as those in informal rulemakings, would be permitted under the proposed amendments.

In paragraph (c)(1), the Board proposes to add an introductory clause, "[e]xcept to the extent permitted by these rules" to reflect the fact that the revised rules would govern, but not entirely prohibit, ex parte communications.

The Board also proposes to amend paragraph (d) to clarify when the ex parte prohibitions take effect. The language of the existing regulations ties ex parte communications governance to the noticing for oral hearing or the taking of evidence by modified procedure. The Board believes that more general "docketing" triggers would better reflect the various ways Board

proceedings are initiated. Thus, under the proposed rule, the prohibitions against ex parte communications in on-the-record proceedings would apply when the first filing or Board decision in a proceeding is posted to the public docket or when the person responsible for a communication knows that the first filing has been filed with the Board, whichever occurs first. In informal rulemaking proceedings, except as provided in the new paragraph (g), discussed in more detail below, the prohibitions on ex parte communications would apply when the Board issues an NPRM.

The Board also proposes to clarify that ex parte prohibitions in covered proceedings remain in effect until the proceeding is no longer subject to administrative reconsideration under 49 U.S.C. 1322(c) or judicial review.

#### *Procedures Upon Receipt of Prohibited Ex Parte Communications*

The Board proposes revisions to paragraphs (e) and (f), which entail the procedures required of Board Members and employees upon receipt of prohibited ex parte communications and sanctions, to reflect the fact that some ex parte communications would be permissible under the revised regulation. First, the proposed rules would clarify that the procedures in paragraphs (e)(1) and (2) apply to "[a]ny Board Member, hearing officer or Board employee" who receives an ex parte communication. Second, the procedures set forth in existing paragraphs (e) and (f) would now apply only to communications not otherwise permitted by the regulation. Lastly, the Board proposes to amend the provision in paragraph (e)(1), which requires the Chief of the Office of Proceedings' Section of Administration to place any written communication or a written summary of an oral communication not permitted by these regulations in the public correspondence file, to also require that such placements be made "promptly" and contain a label indicating that the prohibited ex parte communication is not part of the decisional record of the proceeding.

#### *Ex Parte Communications in Informal Rulemaking Proceedings*

The Board proposes to add a new paragraph (g) specifically governing ex parte communications in informal rulemaking proceedings that occur following the issuance of an NPRM, at which point disclosure requirements would attach. Under the proposed rule, ex parte communications with Board Members in informal rulemaking proceedings following the issuance of

an NPRM would be permitted, subject to disclosure requirements, until 20 days before the deadline for reply comments to the NPRM, unless otherwise specified by the Board. The Board may delegate its participation in such ex parte communications to Board staff. *See e.g., U.S. Rail Serv. Issues Nov. 2015 Decision*, EP 724 (Sub-No. 4). Ex parte communications in informal rulemaking proceedings that occur outside of the permitted meeting period, that occur with Board staff where such participation has not been delegated, or that do not comply with the required disclosure requirements would be subject to the sanctions provided in paragraph (f). To schedule meetings, parties should contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or the Board Member office with whom the meeting is requested, unless otherwise specified by the Board.

As discussed in more detail above, prompt and effective disclosure of ex parte communications in informal rulemaking proceedings would balance the Board's desire to obtain more stakeholder input through informal interactions while ensuring transparency and fairness. Accordingly, the proposed rules would require that the substance of each ex parte meeting be disclosed by the Board by posting in the docket of the proceeding a written meeting summary of the arguments, information, and data presented at each meeting and a copy of any handouts given or presented. The meeting summary would also disclose basic information about the meeting including the date and location of the ex parte communication (or means of communication in the case of telephone calls or video-conferencing) and a list of attendees/participants.

The proposed rules would also provide that the meeting summaries be sufficiently detailed to describe the substance of the ex parte communication. The Board's intent is to create a requirement that ensures that summaries are not merely lists of the topics discussed but rather contain the arguments made and information presented. The proposed rules provide that presenters may be required to resubmit summaries that are insufficiently detailed or that contain inaccuracies as to the substance of the presentation, thus ensuring that the Board attendees at the meeting retain the responsibility of adequate disclosure, as recommended by ACUS. It is the Board's preliminary view that stakeholders do not need further formal instructions in order to provide appropriately detailed summaries, but

parties may comment on whether more specific instructions on the format or content of meeting summaries would be appropriate.<sup>13</sup>

The proposed rules provide that a single meeting summary may be submitted to the Board even if multiple parties, persons, or counsel are involved in the same ex parte meeting. In such instances, it would be the responsibility of the person submitting the summary to ensure that all other parties at the meeting agree to the form and content of the summary. This provision is intended to provide an efficient way for parties with aligned interests to make joint presentations to Board Members or Board staff in the same way they are able to make such presentations via written pleadings. Likewise, the proposed rules would permit parties to present confidential information during ex parte meetings. If the presentations contain material that a party asserts is confidential under an existing protective order governing the proceeding, parties would be required to present a public version and a confidential version of ex parte summaries and any handouts. Just as parties use the redacted, public versions of written filings to vet arguments presented in written comments, parties likewise could use redacted, public versions of the meeting summaries to vet the arguments and information shared with the Board during ex parte meetings. Parties would have the opportunity to respond to any information contained in the meeting summaries in their written NPRM reply comments. To ensure that parties have sufficient time to respond to the meeting summaries, as noted, the Board is proposing that the meetings occur at least 20 days before the deadline for reply comments to the NPRM, unless otherwise specified by the Board. If a protective order has not been issued in the proceeding at the time the presenter seeks to file a meeting summary or handout containing confidential information, the presenting party must file a request with the Board seeking such an order no later than the date it submits its meeting summary.

The Board also believes it is important that meeting summaries be submitted as soon after the meetings occur as practicable. The entire substance of communications is best recalled if they are recorded soon after the meeting or presentation. Moreover, if meeting summaries are submitted

promptly, the Board will be able to post them promptly, which will ensure that all interested stakeholders will have sufficient time to review the summaries. Accordingly, the proposed rules would require parties to submit summaries within two business days of an ex parte presentation or meeting. The rules also provide that the Board would post the summaries within seven days of submission of a summary that is complete for posting.

### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. §§ 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, § 603(a), or certify that the proposed rule would not have a “significant impact on a substantial number of small entities,” § 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities “whose conduct is circumscribed or mandated” by the proposed rule. *White Eagle Coop. v. Conner*, 553 F.3d 467, 480 (7th Cir. 2009).

The proposed regulation would not create a significant impact on a substantial number of small entities.<sup>14</sup> The proposed regulations provide for participation in ex parte communications with the Board in informal rulemaking proceedings to

provide stakeholders with an alternative means of communicating their interests to the Board in a transparent and fair manner. When a party chooses to engage in ex parte communications with the Board in an informal rulemaking proceeding, the requirements contained in these proposed regulations do not have a significant impact on participants, including small entities. While the proposed rules would require parties to provide written summaries of the ex parte communications, based on the Board's experiences in EP 711 (Sub-No. 1) and EP 724 (Sub-No. 4), the summary documentation is a minimal burden. The meeting summaries are generally only a few pages long (excluding copies of handouts from the meetings that were attached). For example, the meeting summaries the Board received in EP 724 (Sub-No. 4) ranged from two to six pages in length. Of those summaries, nearly half were just two pages long. Likewise, in EP 711 (Sub-No. 1), the meeting summaries range from one to four pages in length, with the majority of those summaries being three or fewer pages long. For these reasons, the proposed rule would not place any significant burden on small entities.

### List of Subjects in 49 CFR Part 1102

Administrative practice and procedure.

*It is ordered:*

1. The Board proposes to amend its rules as set forth in this decision. Notice of the proposed rules will be published in the **Federal Register**.

2. The procedural schedule is established as follows: Comments regarding the proposed rules are due by November 1, 2017; replies are due by November 16, 2017.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

4. This decision is effective on the day of service.

Decided: September 26, 2017.

By the Board, Board Member Begeman, Elliott, and Miller.

**Jeffrey Herzig,**  
Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend 49 CFR part 1102 as follows:

### 49 CFR PART 1102— COMMUNICATIONS

■ 1. The authority citation for part 1102 is revised to read as follows:

<sup>13</sup> In addition, stakeholders may find the Board-staff prepared summaries in *U.S. Rail Serv. Issues—Performance Data Reporting*, Docket No. EP 724 (Sub-No. 4), to be helpful examples regarding the appropriate level of detail.

<sup>14</sup> Effective June 30, 2016, for the purpose of RFA analysis for rail carriers subject to Board jurisdiction, the Board defines a “small business” as only including those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. See *Small Entity Size Standards Under the Regulatory Flexibility Act*, EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of \$20 million or less in 1991 dollars, or \$35,809,698 or less when adjusted for inflation using 2016 data. Class II rail carriers have annual operating revenues of less than \$250 million in 1991 dollars or less than \$447,621,226 when adjusted for inflation using 2016 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site. 49 CFR 1201.1–1.

**Authority:** 49 U.S.C. 1321.

■ 2. Amend § 1102.2 as follows:

- a. Revise the section heading;
- b. In paragraph (a), redesignate paragraphs (a)(2) and (3) as paragraphs (a)(4) and (5) and add new paragraphs (2) and (3);
- c. Revise newly redesignated paragraph (a)(5);
- d. Revise paragraph (b) introductory text;
- e. Revise paragraph (b)(1);
- f. Redesignate paragraphs (b)(2) and (3) as paragraphs (b)(3) and (4), and add new paragraphs (b)(2), (5), and (6);
- g. Revise newly designated paragraphs (b)(3) and (4);
- h. Revise paragraphs (c) introductory text, (c)(1), (c)(2), and (d);
- i. Revise paragraph (e);
- j. In paragraph (f)(1), remove “concerning the merits of a proceeding”;
- k. In paragraph (f)(2), add “covered” before the word “proceeding”;
- l. Revise paragraph (f)(3); and
- m. Add a new paragraph (g).

The revisions and additions read as follows:

**§ 1102.2 Procedures governing ex parte communications.**

(a) \* \* \*

(2) “Informal rulemaking proceeding” means a proceeding to issue, amend, or repeal rules pursuant to 5 U.S.C. 553 and part 1110 of this chapter.

(3) “Covered proceedings” means on-the-record proceedings and informal rulemaking proceedings following the issuance of a notice of proposed rulemaking.

\* \* \* \* \*

(5) “Ex parte communication” means an oral or written communication that concerns the merits or substantive outcome of a pending proceeding; is made without notice to all parties and without an opportunity for all parties to be present; and could or is intended to influence anyone who participates or could reasonably be expected to participate in the decision.

(b) *Ex parte communications that are not prohibited and need not be disclosed.*

(1) Any communication that the Board formally rules may be made on an ex parte basis;

(2) Any communication occurring in informal rulemaking proceedings prior to the issuance of a notice of proposed rulemaking;

(3) Any communication of facts or contention which has general significance for a regulated industry if the communicator cannot reasonably be expected to have known that the facts or

contentions are material to a substantive issue in a pending covered proceeding in which it is interested;

(4) Any communication by means of the news media that in the ordinary course of business of the publisher is intended to inform the general public, members of the organization involved, or subscribers to such publication with respect to pending covered proceedings;

(5) Any communications related solely to the preparation of documents necessary for the Board’s implementation of the National Environmental Policy Act and related environmental laws, pursuant to part 1105 of this chapter;

(6) Any communication concerning judicial review of a matter that has already been decided by the Board made between parties to the litigation and the Board or Board staff who are involved in that litigation.

(c) *General Prohibitions.*

(1) Except to the extent permitted by these rules, no party, counsel, agent of a party, or person who intercedes in any covered proceeding shall engage in any ex parte communication with any Board Member, hearing officer, or Board employee who participates, or who may reasonably be expected to participate, in the decision in the proceeding.

(2) No Board Member, hearing officer, or Board employee who participates, or is reasonably expected to participate, in the decision in a covered proceeding shall invite or knowingly entertain any ex parte communication or engage in any such communication to any party, counsel, agent of a party, or person reasonably expected to transmit the communication to a party or party’s agent.

(d) *When prohibitions take effect.* In on-the-record proceedings, the prohibitions against ex parte communications apply from the date on which the first filing or Board decision in a proceeding is posted to the public docket by the Board, or when the person responsible for the communication has knowledge that such a filing has been filed, or at any time the Board, by rule or decision, specifies, whichever occurs first. In informal rulemaking proceedings, except as provided in paragraph (g) of this section, the prohibitions against ex parte communications apply following the issuance of a notice of proposed rulemaking. The prohibitions in covered proceedings continue until the proceeding is no longer subject to administrative reconsideration under 49 U.S.C. 1322(c) or judicial review.

(e) *Procedure required of Board Members and Board staff upon receipt of prohibited ex parte communications.*

(1) Any Board Member, hearing officer, or Board employee who receives an ex parte communication not permitted by these regulations must promptly transmit either the written communication, or a written summary of the oral communication with an outline of the surrounding circumstances to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board. The Section Chief shall promptly place the written material or summary in the correspondence section of the public docket of the proceeding with a designation indicating that it is a prohibited ex parte communication that is not part of the decisional record.

(2) Any Board Member, hearing officer, or Board employee who is the recipient of such ex parte communication may request a ruling from the Board’s Designated Agency Ethics Official as to whether the communication is a prohibited ex parte communication. The Designated Agency Ethics Official shall promptly reply to such requests. The Chief, Section of Administration, Office of Proceedings, shall promptly notify the Chairman of the Board of such ex parte communications sent to the Section Chief. The Designated Agency Ethics Official shall promptly notify the Chairman of all requests for rulings sent to the Designated Agency Ethics Official. The Chairman may require that any communication be placed in the correspondence section of the docket when fairness requires that it be made public, even if it is not a prohibited communication. The Chairman may direct the taking of such other action as may be appropriate under the circumstances.

(f) \* \* \*

(1) The Board may censure, suspend, or revoke the privilege of practicing before the agency of any person who knowingly and willfully engages in or solicits prohibited ex parte communication.

(2) The relief or benefit sought by a party to a covered proceeding may be denied if the party or the party’s agent knowingly and willfully violates these rules.

(3) The Board may censure, suspend, dismiss, or institute proceedings to suspend or dismiss any Board employee who knowingly and willfully violates these rules.

(g) *Ex parte communications in informal rulemaking proceedings; disclosure requirements.*

(1) Notwithstanding paragraph (c) of this section, ex parte communications with Board Members in informal rulemaking proceedings are permitted

after the issuance of a notice of proposed rulemaking and until 20 days before the deadline for reply comments set forth in the notice of proposed rulemaking, unless otherwise specified by the Board in procedural orders governing the proceeding. The Board may delegate its participation in such ex parte communications to Board staff. All such ex parte communications must be disclosed in accordance with paragraph (g)(4) of this section. Any person who engages in such ex parte communications must comply with any schedule and additional instructions provided by the Board in the proceeding. Communications that do not comply with this section or with the schedule and instructions established in the proceeding are not permitted and are subject to the procedures and sanctions in paragraphs (e) and (f) of this section.

(2) To schedule ex parte meetings permitted under paragraph (g)(1) of this section, parties should contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance or the Board Member office with whom the meeting is requested, unless otherwise specified by the Board.

(3) Parties seeking to present confidential information during an ex parte communication must inform the Board of the confidentiality of the information at the time of the presentation and must comply with the disclosure requirements in paragraph (g)(4)(iv) of this section.

(4) The following disclosure requirements apply to ex parte communications permitted under paragraph (g)(1) of this section:

(i) Any person who engages in ex parte communications in an informal rulemaking proceeding shall submit to the Board Member office or delegated Board staff with whom the meeting was held a memorandum that states the date and location of the communication; lists the names and titles of all persons who attended (including via phone or video) or otherwise participated in the meeting during which the ex parte communication occurred; and summarizes the data and arguments presented during the ex parte communication. Any written or electronic material shown or given to Board Members or Board staff during the meeting must be attached to the memorandum.

(ii) Memoranda must be sufficiently detailed to describe the substance of the presentation. Board Members or Board staff may ask presenters to resubmit memoranda that are not sufficiently detailed.

(iii) If a single meeting includes presentations from multiple parties, counsel, or persons, a single summary may be submitted so long as all presenters agree to the form and content of the summary.

(iv) If a memorandum, including any attachments, contains information that the presenter asserts is confidential, the presenter must submit a public version and a confidential version of the memorandum. If there is no existing protective order governing the proceeding, the presenter must, at the same time the presenter submits its public and redacted memoranda, file a request with the Board seeking such an order pursuant to § 1104.14 of this chapter.

(v) Memoranda must be submitted to the Board in the manner prescribed no later than two business days after the ex parte communication.

(vi) Ex parte memoranda submitted under this section will be posted on the Board's Web site in the docket for the informal rulemaking proceeding within seven days of submission. If a presenter has requested confidential treatment for all or part of a memorandum, only the public version will appear on the Board's Web site. Persons seeking access to the confidential version must do so pursuant to the protective order governing the proceeding.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R6-ES-2016-0013; FXES11130900000C6-178-FF09E30000]

RIN 1018-BB41

#### Endangered and Threatened Wildlife and Plants; Removing *Astragalus desereticus* (Deseret Milkvetch) From the Federal List of Endangered and Threatened Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule and 12-month petition finding; request for comments.

**SUMMARY:** The best available scientific and commercial data indicate that threats to *Astragalus desereticus* (Deseret milkvetch) identified at the time of listing in 1999 are not as significant as originally anticipated and are being adequately managed. Therefore, the species no longer meets the definition of an endangered or

threatened species under the Endangered Species Act of 1973, as amended (Act). Consequently, we, the U.S. Fish and Wildlife Service (Service), propose to remove (delist) *Astragalus desereticus* from the Federal List of Endangered and Threatened Plants (List). This determination is based on a thorough review of all available information, which indicates that this species' population is much greater than was known at the time of listing in 1999 and that threats to this species have been sufficiently minimized. This document also serves as the 12-month finding on a petition to remove this species from the List. We are seeking information, data, and comments from the public on the proposed rule to remove the *Astragalus desereticus* from the List.

**DATES:** We will accept comments received or postmarked on or before December 1, 2017. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below), must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by November 16, 2017.

**ADDRESSES:** You may submit written comments on the proposed rule and the draft post-delisting monitoring plan by one of the following methods:

- **Electronically:** Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter Docket No. FWS-R6-ES-2016-0013, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on the blue "Comment Now!" box. If your comments will fit in the provided comment box, please use this feature of <http://www.regulations.gov>, as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred formation is a spreadsheet in Microsoft Excel.

- **By hard copy:** Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-6-ES-2016-0013; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you submit written comments only by the methods described above. We will post all

comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Public Comments, below for more details).

**Document availability:** This proposed rule and supporting documents, including a copy of the draft post-delisting monitoring plan referenced throughout this document, are available on <http://www.regulations.gov> at Docket No. FWS-R6-ES-2016-0013. In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours at the Utah Ecological Services Field Office; 2369 Orton Circle, Suite 50; West Valley City, Utah 84119, telephone: 801-975-3330. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

#### FOR FURTHER INFORMATION CONTACT:

Larry Crist, Field Supervisor, telephone: 801-975-3330. Direct all questions or requests for additional information to: DESERET MILKVETCH QUESTIONS, U.S. Fish and Wildlife Service; Utah Ecological Services Field Office; 2369 Orton Circle, Suite 50; West Valley City, Utah 84119. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 800-877-8337 for TTY assistance.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

**Why we need to publish a rule.** Under the Act, if a species is determined no longer to be threatened or endangered throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Removing a species from the List can only be completed by issuing a rule.

This document proposes delisting *Astragalus desereticus*. This proposed rule assesses the best available information regarding status of and threats to the species.

**The basis for our action.** Under the Act, we can determine that a species is an endangered or threatened species based on any one or more of five factors or the cumulative effects thereof: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that *Astragalus*

*desereticus* no longer meets the definition of an endangered or threatened species under the Act.

**We will seek peer review.** We will seek comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal. Because we will consider all comments and information received during the comment period, our final determination may differ from this proposal.

#### Information Requested

##### Public Comments

We want any final rule resulting from this proposal to be as accurate as possible. Therefore, we invite tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible. We particularly seek comments concerning:

- (1) Reasons why we should or should not remove *Astragalus desereticus* from the List of Endangered and Threatened Plants (*i.e.*, “delist” the species) under the Act;
- (2) New biological or other relevant data concerning any threat (or lack thereof) to this species (for example, those associated with climate change);
- (3) New information on any efforts by the State or other entities to protect or otherwise conserve the species;
- (4) New information concerning the range, distribution, and population size or trends of this species;
- (5) New information on the current or planned activities in the habitat or range that may adversely affect or benefit the species; and
- (6) Information pertaining to the requirements for post-delisting monitoring of *Astragalus desereticus*.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, may not meet the standard of information required by section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*), which directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

To issue a final rule to implement this proposed action, we will take into

consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters’ names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to <http://www.regulations.gov> before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

##### Public Hearing

Section 4(b)(5)(E) of the Act provides for one or more public hearings on this proposed rule, if requested. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by the date shown in **DATES**. We will schedule public hearings on this proposal, if any are requested, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the first hearing.

##### Peer Review

In accordance with our policy, “Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,” which was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We

will ensure that the opinions of peer reviewers are objective and unbiased by following the guidelines set forth in the Director's Memo, which updates and clarifies Service policy on peer review (U.S. Fish and Wildlife Service 2016). The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, our final decision may differ from this proposal.

#### Previous Federal Actions

In 1975, the Smithsonian Institution prepared a report on plants considered to be endangered, threatened, or extinct. On July 1, 1975, we published a notice in the **Federal Register** accepting the Smithsonian report as a petition to list those taxa named, including *Astragalus desereticus* (40 FR 27823). On June 16, 1976, we published a proposed rule to designate approximately 1,700 vascular plants, including *Astragalus desereticus*, as endangered pursuant to section 4 of the Act (41 FR 24523). On December 10, 1979, we published a notice of withdrawal for species that had not had a final rule published, including *Astragalus desereticus* (44 FR 70796). On December 15, 1980, we published a revised notice of review for native plants designating *Astragalus desereticus* as a category 1 candidate species (taxa for which we had sufficient information to support preparation of listing proposals); *Astragalus desereticus* was also identified as a species that may have recently become extinct (45 FR 82480). In 1981, a population of *Astragalus desereticus* was re-discovered. On November 28, 1983, we published a revised notice of review in which *Astragalus desereticus* was included as a category 2 candidate species for which additional information on distribution and abundance was needed (48 FR 53640). That designation was maintained in two subsequent notices of review (50 FR 39526, September 27, 1985, and 55 FR 6184, February 21, 1990). Following additional surveys, the species was reclassified as a category 1 candidate on September 30, 1993 (58 FR 51144). On February 28, 1996, we ceased using category designations and included *Astragalus desereticus* as a candidate species (61 FR 7596). A final rule listing *Astragalus desereticus* as threatened published in the **Federal Register** on October 20, 1999 (64 FR 56590); the rule was effective November 19, 1999. The final listing rule included a determination that the designation of critical habitat for *Astragalus desereticus* was not prudent.

On July 5, 2005, the Center for Native Ecosystems, Forest Guardians, and the

Utah Native Plant Society filed a complaint in the U.S. District Court for the District of Columbia challenging our October 20, 1999, determination that designating critical habitat was not prudent due to the lack of benefit to *Astragalus desereticus* (Center for Native Ecosystems, Forest Guardians, and Utah Native Plant Society v. Gale Norton (05–CV–01336–RCL)). In response to a stipulated settlement agreement, on January 25, 2007, we published an advanced notice of proposed rulemaking stating that designating critical habitat would not be beneficial to the species and recommending removal of the species from the List of Endangered and Threatened Plants because threats to the species identified in the final listing rule were not as significant as earlier believed and were managed such that the species was not likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future (72 FR 3379).

In 2011, we completed a 5-year review of the species to evaluate its status and determined that threats to the species either were not as significant as we had anticipated or had failed to develop; consequently, we recommended delisting (U.S. Fish and Wildlife Service 2011, entire). On October 6, 2015, we received a petition (Western Area Power Administration 2015) to delist the species based on our 2007 recommendation to remove the species from the List of Endangered and Threatened Plants and supported by additional surveys and by recommendations to delist in our 2011 5-year review for the species (72 FR 3379, January 25, 2007; U.S. Fish and Wildlife Service 2011, p. 22). On March 16, 2016, we published a notice of petition findings and initiation of status reviews for 29 species, including *Astragalus desereticus*, which found that the petition presented substantial information indicating that delisting may be warranted (81 FR 14058). This proposed rule presents our conclusions from a status review of the species and serves as the 12-month finding on the petition to delist the species.

#### Species Description and Habitat Information

*Astragalus desereticus* was first collected in 1893, again in 1909, then not located again until 1981 (Barneby 1989, p. 126; Franklin 1990, p. 2). The gap in collections may be due to confusion regarding initial records, which were wrongly attributed to Sanpete County, Utah (Franklin 1990, p. 2). The 1964 description and classification of *Astragalus desereticus*

by Barneby is the accepted taxonomic status (Barneby 1989, p. 126; ITIS 2015).

*Astragalus desereticus* is a perennial, herbaceous plant in the legume family with silvery-gray pubescent leaves that are 2–5 inches (in) (4–12 centimeters (cm)) long and flower petals that are white to pinkish with lilac-colored tips (Barneby 1989, p. 126). The flower structure indicates an adaptation to pollination primarily by large bees, likely bumblebees (*Bombus* spp.), which are generalist pollinators (Stone 1992, p. 4). The species appears to be tolerant of drought (Stone 1992, p. 3). A more detailed description of the biology and life history of *Astragalus desereticus* can be found in our 5-year review of the species (U.S. Fish and Wildlife Service 2011, pp. 5–7).

*Astragalus desereticus* is endemic to Utah County in central Utah, with the only known population near the town of Birdseye (Stone 1992, p. 2). It occurs exclusively on sandy-gravelly soils weathered from the Moroni geological formation, which is limited to an area of approximately 100 square miles (mi<sup>2</sup>) (259 square kilometers (km<sup>2</sup>)) (Franklin 1990, p. 4; Stone 1992, p. 3). The species is known to occur at elevations of 5,400–5,700 feet (ft) (1,646–1,737 meters (m)) (Stone 1992, p. 2; Anderson 2016, pers. comm.; Fitts 2016, pers. comm.). Based upon the species' narrow habitat requirements it has likely always been rare, with minimal additional potential habitat (Franklin 1990, p. 6; Stone 1992, p. 6).

*Astragalus desereticus* is typically found on steep south- and west-facing slopes with scattered Colorado pinyon pine (*Pinus edulis*) and Utah juniper (*Juniperus osteosperma*) (Franklin 1990, p. 2). It also can grow well on west-facing road-cuts where plants are typically larger than those found in undisturbed habitat (Franklin 1990, p. 2). The species' habitat is typically sparsely vegetated (SWCA Environmental Consultants 2015, p. 7). The species is an apparent associate of the pinyon-juniper plant community; it is not shade-tolerant, but is found in open areas between trees where the geologic substrate is most likely the habitat feature to which these plants respond (Goodrich *et al.* 1999, p. 265).

*Astragalus desereticus* is probably a relatively new species on the scale of geologic time that has always occurred in a restricted habitat (a localized neoendemic) based on the ability of the genus to colonize disturbed or unstable habitats in dry climates. This ability has likely hastened evolution of the genus and given rise to many species of *Astragalus* that are sharply differentiated and geographically

restricted (Stone 1992, p. 6). *Astragalus desereticus* appears to tolerate at least some disturbance, such as that caused by road maintenance activities (Franklin 1990, p. 2; Fitts and Fitts 2009, p. 5).

### Species Abundance, Distribution, and Trends

In 1990, surveys for *Astragalus desereticus* estimated fewer than 5,000 plants in a single population (Franklin 1990, p. 3). A subsequent visit to the same site in 1992 estimated more than 10,000 plants, indicating that a large seed bank likely exists (Stone 1992, p. 7). Consequently, at the time of listing we estimated a total population of 5,000–10,000 plants (64 FR 56591, October 20, 1999).

A combination of survey and census was conducted by the Utah Natural Heritage Program in 2008 to visit unsurveyed, suitable habitat and to provide a total population estimate for the species (Fitts 2008, p. 1). The surveyors found new plant sites (hereafter referred to as a colony) to the north and west of the previously known population. Due to higher plant numbers than expected, only small colonies and one large colony were censused; plant numbers at the remaining large colonies were estimated based on a partial census of 20 percent of the site. The total population estimate was 152,229 plants—including seedlings, juveniles, and adults (Fitts and Fitts 2009, p. 4). It was also noted that the number of plants counted in the original area surveyed in 1990 was greater in 2008 than numbers counted previously (Fitts and Fitts 2009, p. 4). In 2009, surveys were expanded and the updated total population estimate was 197,277–211,915 juvenile and adult plants (Fitts and Fitts 2010, p. 6). More plants likely occurred on private land with exposed Moroni Formation outcrops, but the land owner did not give permission to survey (Fitts and Fitts 2010, p. 7). These surveys may have overestimated the species' population using the partial census method due to extrapolation from earlier hand-drawn colony boundaries; the small number of transects; and the inclusion of seedlings, which have a high rate of mortality (U.S. Fish and Wildlife Service 2011, p. 10). If only adults were counted, the population estimate was 86,775–98,818 plants (U.S. Fish and Wildlife Service 2011, p. 10). In 2016, surveys were conducted; those data are still being analyzed. However, we expect to have the 2016 survey results included in the final delisting determination.

At the time of listing, we estimated the occupied habitat of *Astragalus*

*desereticus* to include approximately 300 acres (ac) (122 hectares (ha)) in an area 1.6 mi (2.6 km) × 0.3 mi (0.5 km) (64 FR 56591, October 20, 1999). The most recent occupied habitat estimate is approximately 345 ac (140 ha) in an area 2.8 mi (4.5 km) × 0.3 mi (0.5 km) (Fitts and Fitts 2010, p. 6; SWCA Environmental Consultants 2015, p. 2). The species remains known from one population (Birdseye) of scattered colonies on the Moroni formation soils near Birdseye, Utah (U.S. Fish and Wildlife Service 2011, p. 8).

The limited number of surveys and censuses completed for *Astragalus desereticus*, as well as differences in the size of area investigated, prevent a detailed assessment of population trends. However, the available information indicates a larger population since at least 1990 when the first surveys were conducted.

### Land Ownership

An estimated 230 ac (93 ha) (67 percent) of the 345 ac (140 ha) of total habitat for *Astragalus desereticus* are in the Birdseye Unit of the Northwest Manti Wildlife Management Area owned by the Utah Division of Wildlife Resources (UDWR); the Utah Division of Transportation (UDOT) owns 25 ac (10 ha) (7 percent); and 90 ac (36 ha) (26 percent) are privately owned (UDWR *et al.* 2006, p. 4). Utah School and Institutional Trust Lands Administration (SITLA) owns most of the mineral rights in the species' habitat (UDWR *et al.* 2006, p. 7). Surveys in 1990 and 2016 did not locate the species on Federal lands (Franklin 1990, pp. 3–4; Anderson 2016, pers. comm.).

### Conservation Efforts

A recovery plan for *Astragalus desereticus* was not prepared; therefore, specific delisting criteria were not developed for the species. However, in 2005, we invited agencies with management or ownership authorities within the species' habitat to serve on a team to develop an interagency conservation agreement for *Astragalus desereticus* intended to facilitate a coordinated conservation effort between the agencies (UDWR *et al.* 2006, entire). The *Conservation Agreement for Deseret milkvetch (Astragalus desereticus)* (Conservation Agreement) was signed and approved by UDWR, UDOT, SITLA, and the Service in 2006 and will remain in effect for 30 years. The Conservation Agreement provides guidance to stakeholders to address threats and establish goals to ensure long-term survival of the species (UDWR *et al.* 2006, p. 7). Conservation actions contained in the Conservation

Agreement (in italics), efforts to accomplish these actions, and their current status are described below.

- *Maintain species' habitat within the Wildlife Management Area in its natural state, restricting habitat disturbance:* This action is successful and ongoing. UDWR acquired the Birdseye Unit of the Northwest Manti Wildlife Management Area in 1967; prior to this acquisition, livestock grazing occurred for more than 50 years in the vicinity (UDWR *et al.* 2006, p. 6). Since acquisition, livestock grazing has been used on a limited basis as a management tool by UDWR; however, *Astragalus desereticus* occupied habitat is not suitable for grazing, and impacts to the species have been negligible (UDWR *et al.* 2006, p. 7). This habitat has not been grazed by livestock since 2002 (U.S. Fish and Wildlife 2011, p. 17). Future grazing within occupied habitat is unlikely due to the steep terrain (Howard 2016, pers. comm.). A draft wildlife management plan completed by UDWR proposes closing some unauthorized unpaved roads within the Wildlife Management Area, which likely would further benefit the species by reducing habitat fragmentation (as plants reestablish themselves) and reducing future access to the population (Howard 2016, pers. comm.). We anticipate that the plan will be finalized within the next year (Howard 2017 pers. comm.). Because this plan is currently only in draft, we do not rely on it in this proposal to delist the species. However, it provides an indication of future management intentions of UDWR. Removal of juniper may occur as a habitat improvement for grazing, but not within habitat occupied by the species to avoid plant damage and mortality associated with this surface-disturbing activity (Howard 2016, pers. comm.). The steep terrain associated with *Astragalus desereticus* habitat makes grazing, juniper removal, and other land-disturbing activities associated with livestock grazing unlikely.

- *Retain species' habitat within the Wildlife Management Area under management of UDWR:* This action is successful and ongoing. The UDWR continues to manage species' habitat within the Wildlife Management Area in its natural state, with minimal disturbance, as stipulated in the Conservation Agreement (Howard 2016, pers. comm.).

- *Evaluate feasibility of acquiring conservation easements or fee title purchases on small private land parcels between U.S. Highway 89 and the existing Wildlife Management Area as resources and willing sellers become available:* No easements or property

have been acquired, and we do not rely on this conservation action in our proposal to delist the species. However, UDWR has a statewide initiative to acquire additional lands, so future acquisition may be possible (Howard 2016, pers. comm.).

- *Avoid using herbicides in species' habitat managed by UDOT:* This action is successful and ongoing. The UDOT does not use herbicides in species' habitat within highway rights-of-way, and has committed to continuing this action as stipulated in the Conservation Agreement (Kisen 2016, pers. comm.).

- *Avoid disturbing plants during highway maintenance and construction carried out by UDOT:* This action is successful and ongoing. The UDOT has not disturbed the species during highway maintenance and construction, and no highway widening projects are anticipated through at least 2040, which is as far as their planning extends (Kisen 2016, pers. comm.).

- *Service will monitor populations on an annual basis as needed:* This action is successful and ongoing. Surveys were conducted in May 2016 by Utah Natural Heritage Program personnel, and they are currently analyzing the data.

- *UDWR and the Service will continue discussions on the development and review of management plans and habitat restoration that may affect species' habitat on the Wildlife Management Area:* This action is successful and ongoing. The Service's Utah Field Office is actively engaged with UDWR in the development and review of actions that may affect the species, and meets periodically to implement the protections identified in the Conservation Agreement.

In summary, most of the conservation actions described in the Conservation Agreement have been successfully achieved and are part of an ongoing management strategy for conserving *Astragalus desereticus*. Potential threats from residential development, livestock grazing, and highway maintenance and widening are addressed by conservation actions on approximately 74 percent of all occupied habitat owned and managed by either UDWR or UDOT. Conservation measures initiated under the Conservation Agreement will continue through at least 2036.

As described above, we have new information for *Astragalus desereticus* since our listing decision and the species' status has improved. This improvement is likely due to expanded surveys as well as the amelioration of threats and an improved understanding of the stressors affecting the species (see five-factor discussion in the following section). In addition to the conservation

actions identified in the Conservation Agreement, new opportunities for conservation of the species may be used in the future. For example, a new power line proposed near the species' habitat will use the same corridor as an existing transmission line (see Factor A).

Survey results from 2009 (the most recent estimate), determined that the total population estimate was 197,277–211,915 juvenile and adult plants occurring on approximately 345 ac (140 ha) of habitat, which is a significant increase compared to estimates of 5,000–10,000 plants occurring on approximately 300 ac (122 ha) at the time of listing. We anticipate that the 2016 survey results will confirm that the population remains stable. The majority of the species' occupied habitat (74 percent) is managed by UDWR and UDOT, and we have no information that indicates the species faces significant threats on private lands. Active participation on conservation actions specified in the Conservation Agreement has fluctuated due to funding and staffing since it was established in 2006 (U.S. Fish and Wildlife Service 2011, p. 4). However, all of the associated conservation actions for UDWR and UDOT managed habitat have been successfully implemented, with the exception of acquiring conservation easements. Additionally, as described below, threats identified at the time of listing in 1999 are not as significant as originally anticipated (U.S. Fish and Wildlife Service 2011, p. 21).

#### Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. "Species" is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species. For species that are already listed as

endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the removal of the Act's protections. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error.

*Astragalus desereticus* is currently listed as threatened. Section 3(20) of the Act defines a "threatened species" as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range" (16 U.S.C. 1532). We consider "foreseeable future" as that period of time within which a reliable prediction can be reasonably relied upon in making a determination about the future conservation status of a species, as described in the Solicitor's opinion dated January 16, 2009. We consider 20 years to be a reasonable period of time within which reliable predictions can be made for the species. This time period includes multiple generations of the species, coincides with the duration of the Conservation Agreement, and falls within the planning period used by UDOT. We consider 20 years a conservative timeframe in view of the much longer term protections in place for 67 percent of the species' occupied habitat occurring within the UDWR Wildlife Management Area.

A recovered species has had threats removed or reduced to the point that it no longer meets the Act's definition of threatened or endangered. A species is an "endangered species" for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a "threatened species" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. For the purposes of this analysis, we will evaluate whether or not the currently listed species, *Astragalus desereticus*, should continue to be listed as a threatened species, based on the best scientific and commercial information available.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the

species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the five-factor threats analysis, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could affect a species negatively may not be sufficient to justify a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act. This determination does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered species or threatened species under the Act. The following analysis examines the five factors currently affecting *Astragalus desereticus*, or that are likely to affect it within the foreseeable future.

#### *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Factor A requires the Service to consider present or threatened destruction, modification, or curtailment of *Astragalus desereticus* habitat or range. The species is found in three different land use zones, as categorized by Utah County Land Use Ordinance (Jorgensen 2016b, pers. comm.; Utah County 2016, Chapter 5). Approximately 74.6 percent of the species' habitat occurs in Critical Environment Zone 1, which has the primary purpose of supporting water resources for culinary use, irrigation, recreation, natural vegetation, and wildlife. Approximately 16.7 percent occurs in Residential Agricultural Zone 5, which has the primary purpose of preserving agricultural lands. The remaining 8.6 percent occurs in Critical Environment Zone 2, which has the primary purpose of preserving fragile environmental uses (Jorgensen 2016b, pers. comm.). These zones do not strictly regulate management and land

use and, therefore, are not discussed under Factor D; however, the Ordinance prioritizes uses and provides management guidance for all lands in Utah County, unless specifically exempted (Utah County 2016, Chapter 5). All of the conservation actions in place for the species meet the guidelines under their respective land use zone, and we are not aware of any occupied habitat specifically exempted from the guidance described for the aforementioned land use zones.

The following potential stressors were identified for this species at the time of listing: (1) Residential development, (2) highway maintenance and widening, and (3) livestock grazing and trampling. During the current status review we also considered: (4) mineral development, (5) transmission lines, and (6) climate change. Each of these stressors are assessed below.

#### *Residential Development*

In our final rule listing *Astragalus desereticus*, substantial human population growth and urban expansion were predicted in the Provo, Spanish Fork, and Weber River drainages east of the Wasatch Mountains. Increased residential development was considered a threat to the species due to the potential for loss of plants and habitat that results from construction of roads, buildings, and associated infrastructure (e.g., utilities) (64 FR 56591, October 20, 1999). However, counter to the predictions of the Quality Growth Efficiency Tools Technical Committee cited in our final listing rule, residential development in these areas has been very limited since listing. Despite the recent construction of a house and a barn adjacent to *Astragalus desereticus* occupied habitat (Fitts 2016, pers. comm.), all other nearby development that has already occurred or is planned for the future is located several miles from the species' habitat as described in the following paragraph.

The nearest community, Birdseye, is unincorporated and has not been included in recent U.S. Census Bureau surveys; therefore, no recent population estimates are available. We are aware of only three proposed development properties in this area. One property has potential for 95 lots and is 2.8 mi (4.5 km) from known occupied habitat. The other two developments would be single dwelling properties approximately 4 mi (6 km) and 5 mi (8 km) from known occupied habitat (Larsen 2016, pers. comm.; Jorgensen 2016a, pers. comm.). These three proposed developments are located near Thistle Creek, upstream from *Astragalus desereticus* habitat (Jorgensen 2016a, pers. comm.).

However, the species' habitat occurs on steep upland slopes that are not vulnerable to potential impacts from changes in downstream flows. Residential development at this scale and distance from *Astragalus desereticus* population is not likely to impact the species or its habitat now or within the foreseeable future.

The majority of *Astragalus desereticus* habitat occurs on steep, rocky, erosive slopes that are not favorable for development; consequently, we do not anticipate any future residential development in the species' occupied habitat (Fitts 2016, pers. comm.). Additionally, as previously noted, approximately 230 ac (93 ha)—67 percent of total habitat for the species—are in a Wildlife Management Area owned by the UDWR that is protected from residential development as described under Factor D.

We conclude, based on the available information, that residential development is not a threat to *Astragalus desereticus* currently or within the foreseeable future due to: (1) The minimal disturbance from residential development that has occurred on the species' habitat to date and is anticipated to be minimal in the future; (2) the steep, rocky, erosive nature of the species' habitat, which precludes most development; and (3) the amount of habitat (67 percent) that is protected from residential development.

#### *Highway Widening and Maintenance*

In our final rule listing *Astragalus desereticus*, potential widening of Highway 89 was considered a threat to plants growing in the highway right-of-way (64 FR 56592, October 20, 1999). Highway widening would result in the loss of plants and habitat directly adjacent to Highway 89. Regular highway maintenance activities include herbicide use to control weeds that could result in the loss of plants within the right-of-way and adjacent habitat. Additionally, road improvement projects may generate dust that can affect nearby plants. However, widening of Highway 89 has not occurred and is not anticipated by UDOT through at least 2040, which is as far as planning extends (Kisen 2016, pers. comm.).

The nearest highway development project is a modification of the intersection of Highway 89 and Highway 6 planned for 2017 (Kisen 2016, pers. comm.). This project will take place approximately 7 mi (11 km) north of Birdseye and 4 mi (6 km) north of the nearest occurrence of the species. Therefore, we do not anticipate any direct or indirect impacts to the species.

No other projects are currently planned within 20 mi (32 km) of Birdseye (Kisen 2016, pers. comm.).

Road maintenance is ongoing; however, as committed to in the Conservation Agreement, UDOT avoids herbicide use and other disturbance in the species' habitat (Lewinsohn 2016, pers. comm.; UDWR *et al.* 2006, p. 9). In instances where herbicides must be used, UDOT will not apply by aerial application within 500 ft (152.5 m) of occupied habitat and will maintain a 100-ft (30-m) buffer for hand application of herbicides around individual plants (UDWR *et al.* 2006, p. 9). The species appears to tolerate some levels of disturbance related to road maintenance because it recolonizes areas that have been disturbed by tracked vehicles, road grading equipment, and road cuts (Franklin 1990, p. 2; Fitts and Fitts 2009, p. 5; SWCA 2015, p. 7).

In summary, highway widening and maintenance can destroy habitat and fragment populations, but based upon information provided by UDOT, impacts from these activities are not projected to occur across the range of *Astragalus desereticus* within the foreseeable future. We are not aware of planned road-widening construction projects in or near the species' habitat, and UDOT has committed to avoiding herbicide use and other disturbance in occupied *Astragalus desereticus* habitat during maintenance activities (Lewinsohn 2016, pers. comm.; UDWR *et al.* p. 9). Therefore, based on the available information, we conclude that highway widening and maintenance is not a threat to *Astragalus desereticus* currently or within the foreseeable future.

#### Livestock Grazing and Trampling

In our final rule listing *Astragalus desereticus*, livestock grazing and trampling were considered threats to the species because of direct consumption of plants, trampling of plants and the burrows of ground-dwelling pollinators, and soil erosion (64 FR 56591, October 20, 1999). In contrast to many species of *Astragalus*, this species apparently is not toxic to livestock, and is palatable and may be consumed (Stone 1992, p. 6; Tilley *et al.* 2010, p. 1).

Prior to UDWR acquiring the Northwest Manti Wildlife Management Area in 1967, livestock grazing occurred for more than 50 years on habitat occupied by *Astragalus desereticus*, and may explain why attempts to locate the species were unsuccessful for decades (UDWR *et al.* 2006, p. 6). Once UDWR acquired the land, they chained (removed scrub growth) and seeded level land upslope of the species'

habitat to improve grazing for wild ungulates and livestock; impacts from grazing in the form of trails and trampling were noted at the southern end of *Astragalus desereticus* habitat (Franklin 1990, p. 4, U.S. Fish and Wildlife 2011, p. 16). However, cattle tended to concentrate upslope of the species' habitat in the chained and seeded area where forage production was higher, and by 1992, there were no signs of recent grazing in the species' habitat (Stone 1992, p. 8). The last cattle grazing on the Wildlife Management Unit occurred in 2002 (U.S. Fish and Wildlife 2011, p. 17).

The UDWR does not currently allow livestock grazing on the Birdseye Unit of the Wildlife Management Area, and does not plan for any future grazing within the portion of the Wildlife Management Area that contains *Astragalus desereticus* habitat (Howard 2016, pers. comm.). Avoidance of livestock grazing in species' habitat that is managed by UDWR is stipulated in the Conservation Agreement (UDWR *et al.* 2006, p. 8). Additionally, the species' habitat is not well-suited to grazing due to sparse forage and steep slopes. Some private lands where the species occurs allow livestock grazing; however, when last visited, there was no evidence of impacts to the species (U.S. Fish and Wildlife 2011, p. 17).

In summary, livestock grazing and trampling were considered a threat to *Astragalus desereticus* in our final listing rule because grazing occurred historically over much of the species' habitat and we were concerned about trampling and erosion impacts to the species from livestock use, especially in light of the small population size known at the time. However, changes in land ownership and management due to establishment of the Birdseye Unit of the Northwest Manti Wildlife Management Area reduced the level of livestock use within 67 percent of the species habitat managed now by UDWR. Permitted cattle grazing on the Wildlife Management Area ceased in 2002, and UDWR remains committed to avoiding impacts within the species' habitat (Howard 2016, pers. comm.). Additionally, occupied habitat on both private and protected lands is steep and rocky, with sparse forage. Consequently, minimal grazing impacts have been documented. We conclude, based on the available information, that livestock grazing and trampling are not a threat to *Astragalus desereticus* currently or within the foreseeable future.

#### Mineral Development

Impacts from mineral development were not considered in the final rule to

list *Astragalus desereticus* (64 FR 56590, October 20, 1999). At the time the Conservation Agreement was signed there was no information indicating that mineral development was going to occur (UDWR *et al.* 2006, p. 7). SITLA owns the mineral rights on most of the land occupied by *Astragalus desereticus*, and the agency has not had any inquiries regarding mineral development in the species' habitat since the Conservation Agreement was signed (UDWR *et al.* 2006, p. 7; Wallace 2016, pers. comm.). In the Conservation Agreement, which will remain in effect through 2036, SITLA agreed to alert any energy and mineral developers to the presence of occupied habitat and recommend surface use stipulations that avoid disturbance and provide mitigation for unavoidable effects to plants or their habitat (UDWR *et al.* 2006, p. 8). However, there is a low potential for mineral development in the area; consequently, no future development is anticipated (Wallace 2017, pers. comm.).

In summary, developers have not expressed any interest in mineral development within the range of *Astragalus desereticus*. Additionally, there is a low potential for mineral development in the area; consequently, no future development is anticipated (Wallace 2017, pers. comm.). Therefore, based on the available information, we conclude that mineral development is not a threat to *Astragalus desereticus* currently or within the foreseeable future.

#### Transmission Lines

Impacts from transmission lines were not considered in the final rule to list the species (64 FR 56590, October 20, 1999). The Mona to Bonanza high-voltage transmission line is an existing power line near *Astragalus desereticus* habitat located at the easternmost extent of the known range of the species (Miller 2016, pers. comm.). A new power line proposed in the area is the TransWest Express transmission line. This proposed transmission line would use the same corridor as the existing Mona to Bonanza transmission line (SWCA Environmental Consultants 2015, p. 1). TransWest Express estimated that approximately 10.9 ac (4.4 ha) of potential or occupied habitat for the species occurs within 300 ft (91 m) of proposed transmission structures, and approximately 0.25 ac (0.10 ha) would be directly disturbed (SWCA Environmental Consultants 2015, p. 17). This estimate included some habitat above 6,000 ft (1,829 m) that was likely misidentified as occupied habitat (Fitts 2016, pers. comm.). Therefore, actual

disturbance estimates may be slightly less than 0.25 ac (0.10 ha). We estimate that up to one percent of the species' total population could be impacted if no measures to minimize impacts were taken (U.S. Fish and Wildlife Service 2016, p. 29). However, minimal impacts are expected to result from the transmission line installation because dust abatement measures would be implemented, the proposed route is located farther away from *Astragalus desereticus* populations than the existing Mona to Bonanza transmission line, and existing access roads would be used within the species' habitat (U.S. Fish and Wildlife Service 2016, pp. 25–31). Consequently, impacts from the proposed TransWest Express transmission line are not anticipated to result in a population-level effect to the species based upon the localized extent of impacts and the currently robust status of the species (see Species Abundance, Distribution, and Trends). In addition, the species is able to tolerate some levels of disturbance, and plants have recolonized disturbed areas (Fitts and Fitts 2009, p. 5; Franklin 1990, p. 2).

In summary, *Astragalus desereticus* maintains a large, robust population next to the existing Mona to Bonanza transmission line, and only a very minimal amount of habitat (less than 0.25 ac (0.10 ha)) would be disturbed by the proposed future construction of the TransWest transmission line. We conclude, based on the available information, that transmission lines are not a threat to *Astragalus desereticus* currently or within the foreseeable future.

#### Climate Change

Impacts from climate change were not considered in the final rule to list the species (64 FR 56590, October 20, 1999). Our current analyses under the Act include consideration of ongoing and projected changes in climate. The terms "climate" and "climate change" are defined by the Intergovernmental Panel on Climate Change (IPCC). "Climate" refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or

indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

The current rate of a decade-long drought in the southwestern United States is one per century (Ault *et al.* 2013, p. 7538). This equates to a 50 percent chance over a 50 year interval. Estimates regarding the risk of future persistent droughts in the southwestern United States over the time period from 2050 to 2100 increase to 50–90 percent over the 50 year interval (Ault *et al.* 2013, pp. 7541–7547). In other words, the likelihood of future drought in the southwestern United States is stable to increasing when compared to current conditions. Climate models that predict future temperatures over three different time periods in the 21st century for the southwestern United States show the greatest warming in summer months (3.5–6.5 degrees Fahrenheit (°F)) (1.9–3.6 degrees Celsius (°C)), with a localized maximum increase in temperatures in central Utah (Kunkel *et al.* 2013, p. 72). Nationwide, Utah ranks eighth in rate of warming since 1912, with a 0.233 °F (0.129 °C) increase per decade; and seventh in rate of warming since 1970, with a 0.588 °F (0.327 °C) increase per decade (Tebaldi *et al.* 2012, pp. 3 and 5). We do not have information regarding the increased likelihood of drought or temperature increases at the more detailed scale of the range of *Astragalus desereticus*—a range that encompasses only a portion of one county in central Utah. Therefore, more site specific predictions are not possible.

The *Astragalus* genus has the ability to colonize disturbed or unstable habitats in progressively dry climates and thus appears to be adapted to drought (Stone 1992, p. 6). Generally plant numbers decrease during drought years and recover in subsequent seasons that are less dry. For example, many plants of *Astragalus desereticus* appeared to die-off in response to the 2012 drought, but have since repopulated the area from the seed bank (Fitts 2016, pers. comm.). *Astragalus desereticus* and other species in the bean family typically have persistent seed banks with at least some proportion of the seed bank being long-lived because the seeds are physically dormant for long periods of time (Dodge

2009, p. 3; Orscheg and Enright 2011, p. 186; Segura *et al.* 2014, p. 75). Dormant seeds have a seed coat that imposes a physical barrier between water and the embryo, and this type of dormancy provides an ecological advantage by staggering germination over a long period of time, protecting the embryo from microbial attack, and increasing the longevity of seeds within the soil (Fulbright 1987, p. 40). Species with physically dormant seeds typically have seeds germinating over many years, which increases the probability of the species' persistence in an unpredictable environment and has been termed a "bet-hedging strategy" (Simons 2009, pp. 1990–1991; Williams and Elliott 1960, pp. 740–742). This strategy buffers a population against catastrophic losses and negative effects from environmental variation (Tielbörger *et al.* 2014, p. 4). *Astragalus desereticus* can be dormant and not detectable for some years, but later detected in the same area given favorable precipitation conditions (Fitts 2016, pers. comm.). This pattern provides some evidence the species has a persistent seed bank and possibly other life stages that remain dormant during drought conditions. As a result, multiple years of surveys may be necessary to determine if *Astragalus desereticus* is present within suitable habitat.

*Astragalus desereticus* appears well-adapted to a dry climate and can quickly colonize after disturbance. Plants growing in high-stress landscapes (e.g., poor soils and variable moisture) are generally adapted to stress and thus may experience lower mortality during severe droughts (Gitlin *et al.* 2006, pp. 1477 and 1484). Furthermore, plants and plant communities of arid and semi-arid systems may be less vulnerable to the effects of climate change if future climate conditions are within the historic natural climatic variation experienced by the species (Tielbörger *et al.* 2014, p. 7). The species likely has experienced multiple periods of prolonged drought conditions in the past as documented from reconstructed pollen records in sagebrush steppe lands (Mensing *et al.* 2007, pp. 8–10). Natural climatic variation in the Southwest for the last 500 years included periodic major droughts (Kunkle *et al.* 2013, p. 14). Therefore, it is likely that the species will be able to withstand future periods of prolonged drought.

In summary, climate change is affecting and will continue to affect temperature and precipitation events. We expect that *Astragalus desereticus*, like other narrow endemics, could experience future climate change-

related drought. However, current data are not sufficiently reliable at the local level to predict the scope of effects of future climate change-related drought. The information we do have indicates the species and the genus are adapted to drought and are able to re-colonize disturbed areas. Therefore, based upon available information, we conclude that climate change is not a threat to *Astragalus desereticus* currently or within the foreseeable future.

#### Summary of Factor A

The following stressors warranted consideration as possible current or future threats to *Astragalus desereticus* under Factor A: (1) Residential development, (2) highway maintenance and widening, (3) livestock grazing and trampling, (4) mineral development, (5) transmission lines, and (6) climate change. However, these stressors either have not occurred to the extent anticipated at the time of listing, are being adequately managed, or the species is tolerant of the stressor as described below.

- Minimal disturbance from residential development has occurred on the species' habitat to date and is anticipated in the future because of the steep, rocky, erosive nature of the species' habitat. In addition, 67 percent of the species' habitat is protected from residential development due to its inclusion in a State wildlife management area.
- No highway widening is anticipated by UDOT in occupied habitat, and herbicide use and other disturbances are avoided in habitat for the species.
- The steep, rocky nature of the species' habitat and sparse forage minimize livestock grazing, and 67 percent of all habitat is carefully managed by UDWR to restrict it from grazing.
- The lack of inquiries and low potential regarding mineral development indicate that mineral development is not a threat.
- The existing transmission line is not a threat to the species, and activity associated with the proposed transmission line occurring within the species' occupied habitat will be confined to existing access roads.
- The species and its genus are likely adapted to drought related to climate change.
- The species appears able to readily re-colonize disturbed areas.

Therefore, based on the available information, we do not consider there to be any threats now, nor are there likely to be any threats in the future, related to the present or threatened destruction,

modification, or curtailment of habitat or range of *Astragalus desereticus*.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Factor B requires the Service to consider overutilization of *Astragalus desereticus* for commercial, recreational, scientific, or educational purposes. Overutilization for any purpose was not considered a threat in the final rule to list the species (64 FR 56593, October 20, 1999). The only collections of the species that we are aware of were for scientific purposes. An unknown number of seeds were collected in 2007 and approximately 850 seeds were collected from 45 plants in 2008. In addition, 1,016 seeds were collected from 55 plants in 2009 for germination trials and long-term seed storage at Red Butte Gardens and Arboretum in Salt Lake City, Utah, and the National Center for Genetic Resources Preservation in Fort Collins, Colorado (Dodge 2009, p. 4). This amount of collection is insignificant given the current population estimates for the species, and overall it is beneficial because it will improve our understanding of species propagation and ensure genetic preservation. We are not aware of any other utilization of the species. Therefore, based on the available information, we do not consider there to be any threats now, nor are there likely to be any threats in the future, related to overutilization for commercial, recreational, scientific, or educational purposes of *Astragalus desereticus*.

#### C. Disease or Predation

Factor C requires the Service to consider impacts to *Astragalus desereticus* from disease and predation. Disease and predation were not considered threats in the final rule to list the species (64 FR 56593, October 20, 1999). We are not aware of any issues or potential stressors regarding disease or insect predation. As described in more detail under Factor A, grazing—which could be considered a form of predation—is limited in the species' habitat and it does not affect the species throughout its range or at a population level. Therefore, based on the available information, we do not consider there to be any threats now, nor are there likely to be any threats in the future, related to disease or predation of *Astragalus desereticus*.

#### D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to

*Astragalus desereticus* discussed under other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account “those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species.” In relation to Factor D under the Act, we interpret this language to require us to consider relevant Federal, State, and Tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in the threats analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations; an example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

For currently listed species that are being considered for delisting, we consider the adequacy of existing regulatory mechanisms to address threats to the species absent the protections of the Act. We examine whether other regulatory mechanisms would remain in place if the species were delisted, and the extent to which those mechanisms will continue to help ensure that future threats will be reduced or minimized.

In our discussion under Factors A, B, C, and E, we evaluate the significance of threats as mitigated by any conservation efforts and existing regulatory mechanisms. Where threats exist, we analyze the extent to which conservation measures and existing regulatory mechanisms address the specific threats to the species. Regulatory mechanisms may reduce or eliminate the impacts from one or more identified threats.

As previously discussed, conservation measures initiated by UDWR, SITLA, and UDOT under the Conservation Agreement manage potential threats caused by residential development, highway maintenance and widening, and livestock grazing and trampling, as well as the more recently identified proposed transmission line. In addition to these conservation measures, relevant Utah State statutes and UDWR administrative rules that will remain in effect regardless of the species' status under the Act include:

1. Title 23—Wildlife Resources Code of Utah, Chapter 21—Lands and Waters for Wildlife Purposes, Section 5—State-owned lands authorized for use as wildlife management areas, fishing waters, and for other recreational activities. This statute authorizes the creation, operation, maintenance, and

management of wildlife management areas including the Birdseye Unit of the Northwest Manti Wildlife Management Area. The Birdseye Unit contains 67 percent of all known habitat occupied by *Astragalus desereticus*.

Consequently, two-thirds of all known habitat is currently managed and will continue to be managed as wildlife habitat regardless of the species' status under the Act.

2. UDWR Administrative Rule R657–28—Use of Division Lands. This administrative rule describes the lawful uses and activities on UDWR lands including Birdseye Unit of the Northwest Manti Wildlife Management Area. These uses cannot conflict with the intended land use or be detrimental to wildlife or wildlife habitat. This administrative rule provides further support to beneficial management on the 67 percent of occupied habitat managed by UDWR, regardless of the species' status under the Act.

We are not aware of any *Astragalus desereticus* occupied habitat on Federal lands. We anticipate that the conservation measures initiated by UDWR, SITLA, and UDOT under the Conservation Agreement will continue through at least 2036. Consequently, we find that conservation measures along with existing State regulatory mechanisms are adequate to address these specific stressors absent protections under the Act.

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Factor E requires the Service to consider any other factors that may be affecting *Astragalus desereticus*. Under this factor, we discuss: (1) Rarity, (2) stochastic events, and (3) cumulative effects.

##### Rarity

In our final rule listing *Astragalus desereticus*, small population size was considered a concern for the species because of the potential for low levels of genetic diversity as compared to other more widespread related species (64 FR 56593, October 20, 1999). A species may be considered rare due to: (1) a limited geographic range, (2) occupation of specialized habitats, or (3) small population numbers (Primack 1998, p. 176). This species meets each of these qualifications.

*Astragalus desereticus* is likely a localized neoendemic, that is, it is a relatively new species on the scale of geologic time and likely has always been geographically restricted (rare) (Stone 1992, p. 6). A species that has always been rare, yet continues to survive, could be well-equipped to

continue to exist into the future. Many naturally rare species exhibit traits that allow them to persist for long periods within small geographic areas, despite their small population size.

Consequently, the fact that a species is rare does not necessarily indicate that it may be endangered or threatened. Rarity alone, in the absence of other stressors, is not a threat. Despite the species' unique habitat characteristics and limited range, its current population numbers and preliminary demographic analyses show that its known population (via information at monitored sites) is much larger than in 1990 when the first surveys were conducted and will likely be sustained due to the species' resiliency and the absence of significant stressors. Additionally, as noted under Factor B, seeds have been collected for long-term seed storage at Red Butte Gardens and Arboretum in Salt Lake City, Utah, and the National Center for Genetic Resources Preservation in Fort Collins, Colorado (Dodge 2009, p. 4). This collection provides added security for the species.

##### Stochastic Events

In our final rule listing *Astragalus desereticus*, stochastic events—particularly fire, drought, and disease—were considered a threat because of the species' small population size and highly restricted range (64 FR 56593, October 20, 1999). Because rare species may be vulnerable to single event occurrences, it is important to have information on how likely it is such an event may occur and how it may affect the species. Demographic stochasticity—random events in survival and reproductive success—and genetic stochasticity—from inbreeding and changes in gene frequency—are not significant threats based on limited abundance trends and the known population size of the species (Stone 1992, pp. 8–10). The same author noted that environmental stochasticity—such as fire, drought, and disease—may be a threat to the species (Stone 1992, p. 10). However, we have since concluded that fire is unlikely in the open, sparsely wooded habitat that the species favors (72 FR 3379, January 25, 2007; U.S. Fish and Wildlife 2011, p. 21). As noted in the discussion of climate change under Factor A, the species appears to be drought tolerant, showing an ability to rebound following drought and recolonize disturbed areas in progressively dry climates. Lastly, as noted under Factor C, there is no evidence of disease or insect pests. Since listing, survey data has shown the species' known range is somewhat

larger and its population numbers are much higher than previously thought, which indicates a tolerance to stochastic events. These increases are likely due to a combination of expanded surveys and increases in population.

##### Summary of Factor E

Given the lack of threats within the *Astragalus desereticus* population and the robust population size, we conclude that rarity and stochastic events are not threats now, nor are they likely to be threats in the future, to *Astragalus desereticus*.

##### Cumulative Effects

Many of the stressors discussed in this analysis could work in concert with each other resulting in a cumulative adverse effect to *Astragalus desereticus*, e.g., one stressor may make the species more vulnerable to other threats. For example, stressors discussed under Factor A that individually do not rise to the level of a threat could together result in habitat loss. Similarly, small population size in combination with stressors discussed under Factor A could present a potential concern. However, most of the potential stressors we identified either have not occurred to the extent originally anticipated at the time of listing in 1999 or are adequately managed as described in this proposal to delist the species. Furthermore, those stressors that are evident, such as drought and rarity, appear well-tolerated by the species. In addition, we do not anticipate stressors to increase on UDWR lands that afford protections to the species on 67 percent of occupied habitat for the reasons discussed in this delisting proposal. Furthermore, the increases documented in the abundance and distribution of the species since it was listed do not support a conclusion that cumulative effects threaten the species.

#### **Proposed Determination of Species Status**

##### *Introduction*

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for determining whether a species is an endangered species or threatened species and should be included on the Federal Lists of Endangered and Threatened Wildlife and Plants (listed). The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within

the foreseeable future.” The phrase “significant portion of its range” (SPR) is not defined by the Act, and, since the Service’s policy interpreting the phrase was vacated by the court in *Center for Biological Diversity v. Sally Jewel*, No. 14–cv–02506–RM (D. Ariz. Mar. 29, 2017), we currently do not have a binding interpretation that addresses: (1) The outcome of a determination that a species is either in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range; or (2) what qualifies a portion of a range as “significant.” We have examined the plain language of the Act and court decisions addressing the Service’s application of the SPR phrase in various listing decisions, and for purposes of this rulemaking we are applying the following interpretation for the phrase “significant portion of its range” and its context in determining whether or not a species is an endangered species or a threatened species.

Two district court decisions have evaluated whether the outcomes of the Service’s determinations that a species is in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range were reasonable. *Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010) (appeal dismissed as moot because of public law vacating the listing, 2012 U.S. App. LEXIS 26769 (9th Cir. Nov. 7, 2012)); *WildEarth Guardians v. Salazar*, No. 09–00574–PHX–FJM, 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010). Both courts found that once the Service determines that a “species”—which can include a species, subspecies, or DPS under ESA Section 3(16)—meets the definition of “endangered species” or “threatened species,” the species must be listed in its entirety and the Act’s protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act). See *Defenders*, 729 F. Supp. 2d at 1222 (delisting the Northern Rocky Mountain DPS of gray wolf except in the Wyoming portion of its range (74 FR 15123, April 2, 2009) was unreasonable because the ESA unambiguously prohibits listing or protecting part of a DPS); *WildEarth Guardians*, 2010 U.S. Dist. LEXIS 105253, at 15–16 (the Service’s finding that listing the Gunnison’s prairie dog in the “montane portion” of its range was warranted (73 FR 6660, February 5, 2008) was unreasonable because the Service “cannot determine that anything other than a species, as defined by the

ESA, is an endangered or threatened species”). The issue has not been addressed by a Federal Court of Appeals.

For the purposes of this rule, we interpret the phrase “significant portion of its range” (SPR) in the Act’s definitions of “endangered species” and “threatened species” to provide an independent basis for listing a species in its entirety; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be in danger of extinction or likely to become so in the foreseeable future throughout all of its range; or a species may be in danger of extinction or likely to become so throughout a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an “endangered species.” The same analysis applies to “threatened species.” Therefore, the consequence of finding that a species is in danger of extinction or likely to become so throughout a significant portion of its range is that the entire species will be listed as an endangered species or threatened species, respectively, and the Act’s protections will be applied to all individuals of the species wherever found.

Although there are potentially many ways to determine whether a portion of a species’ range is “significant,” we conclude, for the purposes of this rule, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for “significant” in terms of an increase in the risk of extinction for the species. We conclude that such a biologically based definition of “significant” best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species’ conservation.

For the purposes of this rule, we determine if a portion’s biological contribution is so important that the portion qualifies as “significant” by asking whether, *without that portion*, the species in the remainder of its range warrants listing (*i.e.*, is in danger of extinction or likely to become so in the foreseeable future). Conversely, we would not consider the portion of the range at issue to be “significant” if the species would not warrant listing in the remainder of its range even if the population in that portion of the range in question became extirpated (extinct locally).

We interpret the term “range” to be the general geographical area within which the species is currently found, including those areas used throughout

all or part of the species’ life cycle, even if not used on a regular basis. We consider the “current” range of the species to be the range occupied by the species at the time the Service makes a determination under section 4 of the Act. The phrase “is in danger” in the definition of “endangered species” denotes a present-tense condition of being at risk of a current or future undesired event. Hence, to say a species “is in danger” in an area where it no longer exists—*i.e.*, in its historical range where it has been extirpated—is inconsistent with common usage. Thus, “range” must mean “current range,” not “historical range.” A corollary of this logic is that lost historical range cannot constitute a significant portion of a species’ range where a species is in danger of extinction or likely to become so within the foreseeable future (*i.e.*, it cannot be currently in danger of extinction in a portion of its range where it is already extirpated). While we conclude that a species cannot be in danger of extinction in its lost historical range, taking into account the effects of loss of historical range on a species is an important component of determining a species’ current and future status.

In implementing these independent bases for listing a species, as discussed above, we list any species in its entirety either because it is in danger of extinction now or likely to become so in the foreseeable future throughout all of its range or because it is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range. With regard to the text of the Act, we note that Congress placed the “all” language before the SPR phrase in the definitions of “endangered species” and “threatened species.” This suggests that Congress intended that an analysis based on consideration of the entire range should receive primary focus. Thus, the first step in our assessment of the status of a species is to determine its status throughout all of its range. Depending on the status throughout all of its range, we will subsequently examine whether it is necessary to determine its status throughout a significant portion of its range.

Under section 4(a)(1) of the Act, we determine whether a species is an endangered species or threatened species because of any of the following: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or

manmade factors affecting its continued existence. These five factors apply whether we are analyzing the species' status throughout all of its range or throughout a significant portion of its range.

*Astragalus Desereticus—Determination of Status Throughout All of Its Range*

We conducted a review of the status of *Astragalus desereticus* and assessed the five factors to evaluate whether *Astragalus desereticus* is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range. We also consulted with species experts and land management staff with UDWR and UDOT who are actively managing for the conservation of the species. We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the species. We considered all of the stressors identified at the time of listing as well as newly identified potential stressors such as mineral development, transmission lines, and climate change. As previously described, the stressors considered in our five-factor analysis fall into one or more of the following categories:

- Stressors including residential development, highway widening, and livestock grazing and trampling have not occurred to the extent anticipated at the time of listing, and existing information indicates that the extent of impact will not change in the future.
- Stressors including highway maintenance, livestock grazing, transmission lines, and mineral development are adequately managed through the Conservation Agreement and measures described in the Biological Opinion for the TransWest Express Transmission Line Project, and existing information indicates that this management will not change in the future.
- The species is tolerant of stressors including climate change, transmission lines, rarity, stochastic events, and cumulative effects, and existing information indicates that this tolerance will not change in the future.

These conclusions are supported by the available information regarding species abundance, distribution, and trends and are in agreement with information presented in our advanced notice of proposed rulemaking (72 FR 3379, January 25, 2007) and in our 5-year review (U.S. Fish and Wildlife Service 2011). Thus, after assessing the best available information, we conclude that *Astragalus desereticus* is not in danger of extinction throughout all of its range, nor is it likely to become so in the foreseeable future.

*Determination of Status Throughout a Significant Portion of Its Range*

Consistent with our interpretation that there are two independent bases for listing species as described above, after examining the species' status throughout all of its range, we now examine whether it is necessary to determine its status throughout a significant portion of its range. We must give operational effect to both the "throughout all" of its range language and the SPR phrase in the definitions of "endangered species" and "threatened species." The Act, however, does not specify the relationship between the two bases for listing. As discussed above, to give operational effect to the "throughout all" language that is referenced first in the definition, consideration of the species' status throughout the entire range should receive primary focus and we should undertake that analysis first. In order to give operational effect to the SPR language, the Service should undertake an SPR analysis if the species is neither in danger of extinction nor likely to become so in the foreseeable future throughout all of its range, to determine if the species should nonetheless be listed because of its status in an SPR. Thus, we conclude that, to give operational effect to both the "throughout all" language and the SPR phrase, the Service should conduct an SPR analysis if (and only if) a species does not warrant listing according to the "throughout all" language.

Because we determined that *Astragalus desereticus* is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we will consider whether there are any significant portions of its range in which the species is in danger of extinction or likely to become so.

Although there are potentially many ways to determine whether a portion of a species' range is "significant," we conclude, as noted above, for the purposes of this rule, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for "significant" in terms of an increase in the risk of extinction for the species. We conclude that such a biologically based definition of "significant" best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and

representation because decreases in the redundancy, resiliency, and representation of a species lead to increases in the risk of extinction for the species. *Redundancy* (having multiple resilient populations considering genetic and environmental diversity) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Resiliency* describes the characteristics of a species that allow it to recover from stochastic events or periodic disturbance.

*Representation* (the range of variation found in a species) ensures that the species' ability to adapt to changing environments is conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristics of a species or area may contribute to all three. For example, distribution across a wide variety of habitats is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be "significant" due to its contributions under any one of these concepts.

For the purposes of this rule, we determine if a portion's biological contribution is so important that the portion qualifies as "significant" by asking whether, *without that portion*, the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction or likely to become so in the foreseeable future (*i.e.*, would be an "endangered species" or a "threatened species"). Conversely, we would not consider the portion of the range at issue to be "significant" if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction or likely to become so throughout its range even if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of "significant" establishes a threshold that is relatively high. Given that the outcome of finding a species to be in danger of extinction or likely to become so in an SPR would be to list the species and apply protections of the Act to all individuals of the species wherever

found, it is important to use a threshold for “significant” that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered “significant” even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species’ range can be said to contribute some increment to a species’ viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: Listing would be rangewide, even if only a portion of the range with minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for “significant” that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered “significant” only if threats in that portion result in the entire species’ being currently in danger of extinction or likely to become so. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife v. Norton*, 258 F.3d 1136 (9th Cir. 2001).

The definition of “significant” used in this rule carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions would be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase “throughout a significant portion of its range” loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that the current species level of imperilment in the portion results in the species currently being in danger of extinction or likely to become so throughout all of its range. Under the definition of “significant” used in this rule, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that, if the species is imperiled in a portion that rises to that higher level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be in danger of extinction or likely to become so everywhere without that portion, *i.e.*, if

that portion were hypothetically completely extirpated. In other words, the portion of the range need not be so important that being merely in danger of extinction in that portion or likely to become so would be sufficient to cause the species to be in danger of extinction or likely to become so in the foreseeable future throughout all of its range. Instead, we evaluate whether the *complete extirpation* (in a hypothetical future) of the species in that portion would at that point cause the species throughout its remaining range to be in danger of extinction or likely to become so in the foreseeable future.

We are aware that the court in *Center for Biological Diversity v. Sally Jewel* found that this definition of “significant” does not give sufficient independent meaning to the SPR phrase. However, the court’s decision was based on two misunderstandings about the interpretation of “significant.” First, the court’s decision was based on its finding that, as with the interpretation that the court rejected in *Defenders*, the definition of significant does not allow for an independent basis for listing. However, this definition of significant is not the same as the definition applied in *Defenders*, which looked at the current status within the portion and asked what the effect on the remainder of the species was. By contrast, this definition of significance uses a hypothetical test of loss of the portion and asks what the effect on the remainder of the species would be; the current status of the species in that portion is relevant *only* for determining the listing status if the portion has been determined to be significant. This definition of “significant” establishes a lower threshold than requiring that the species’ current status in that portion of its range causes the species to be in danger of extinction throughout all of its range or likely to become so in the foreseeable future.

The second misunderstanding was the court’s characterization of the listing determination for the African coelacanth as an indication the Services have had difficulty accurately applying this definition of “significant.” However, in that listing determination, the conclusion was that the species was not in danger of extinction throughout all of its range or likely to become so in the foreseeable future but it did warrant listing because of its status in a significant portion of its range. The only reason for not listing the entire species was that the population in that portion of the range met the definition of a distinct population segment (DPS), and therefore the agency listed the DPS instead of the entire species. The

population in an SPR is not automatically a DPS so, contrary to the court’s reasoning the definition of “significant” can be applied and result in listing a species that would not otherwise be listed. In light of these flaws, we are currently seeking reconsideration of the district court’s decision.

To undertake this analysis, we first identify any portions of the species’ range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that there are any portions of the species’ range: (1) That may be “significant,” and (2) where the species may be in danger of extinction or likely to become so in the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required.

In practice, one key part of identifying portions for further analysis may be whether the threats or effects of threats are geographically concentrated in some way. If a species throughout its range is not in danger of extinction or likely to become so in the foreseeable future and the threats to the species are essentially uniform throughout its range, then the species is not likely to be in danger of extinction or likely to become so in the foreseeable future in any portion of its range. Moreover, if any concentration of threats applies only to portions of the species’ range that are not “significant,” such portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) where the species may be in danger of extinction or likely to become so in the foreseeable future, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is in danger of extinction or likely to become so in the foreseeable future. We must go through a separate analysis to determine whether the species is in danger of extinction or likely to become so in the SPR. To make that determination, we will use the same standards and methodology that we use to determine if a species is in danger of extinction or

likely to become so in the foreseeable future throughout all of its range.

Once we have identified portions of the species' range for further analysis, depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not "significant," we do not need to determine whether the species is in danger of extinction or likely to become so in the foreseeable future there; if we determine that the species is not in danger of extinction or likely to become so in a portion of its range, we do not need to determine if that portion is "significant."

#### *Astragalus desereticus*—Determination of Significant Portion of Its Range

Applying the process described above, to identify whether any portions warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. To identify portions that may be in danger of extinction or likely to become so in the foreseeable future, we consider whether there is substantial information to indicate that any threats or effects of threats are geographically concentrated in any portion of the species' range. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to have a greater risk of extinction, and thus would not warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of "significant" (*i.e.*, the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

We evaluated the range of *Astragalus desereticus* to determine if any area could be considered a significant portion of its range. As mentioned above, one way to identify portions for further analyses is to identify portions that might be of biological or conservation importance, such as any natural, biological divisions within the range that may, for example, provide population redundancy or have unique ecological, genetic, or other characteristics. Based on the small range of the species—approximately 345 ac (140 ha) in an area 2.8 mi (4.5 km) × 0.3 mi (0.5 km)—we determined that the species is a single, contiguous population and that there are no

separate areas of the range that are significantly different from others or that are likely to be of greater biological or conservation importance than any other areas due to natural biological reasons alone. Therefore, there is not substantial information that logical, biological divisions exist within the species' range.

After determining there are no natural biological divisions delineating separate portions of the *Astragalus desereticus* population, we next examined whether any threats are geographically concentrated in some way that would indicate the species could be in danger of extinction, or likely to become so, in that area. There is some difference in livestock grazing between State and private lands, with little or no grazing on the 67 percent of habitat occurring on State lands and occasional potential grazing on the remaining private lands. However, steep topography limits grazing everywhere, and there are not fences separating State and private lands (U.S. Fish and Wildlife Service 2011, p. 17). We have reviewed other potential threats and conclude that none of them are concentrated in any portion of the species' range so as to affect the representation, redundancy, or resiliency of the species.

We did not identify any portions where *Astragalus desereticus* may be in danger of extinction or likely to become so in the foreseeable future. Therefore, no portions warrant further consideration to determine whether the species may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range. We conclude that the species is, therefore, not an endangered species or threatened species based on its status in a significant portion of its range.

#### *Astragalus desereticus*—Determination of Status

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Astragalus desereticus*. Because the species is not in danger of extinction now or in the foreseeable future throughout all of its range or any significant portion of its range, the species does not meet the definition of an endangered species or threatened species.

#### Effects of the Rule

This proposal, if made final, would revise 50 CFR 17.12(h) to remove *Astragalus desereticus* from the Federal List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and

9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect *Astragalus desereticus*. There is no critical habitat designated for this species.

#### Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We are proposing delisting for *Astragalus desereticus* based on new information we have received as well as recovery actions taken. Since delisting will be due in part to recovery, we have prepared a draft post-delisting monitoring (PDM) plan for *Astragalus desereticus*. The PDM plan was prepared in coordination with the Utah Department of Natural Resources (UDNR) and UDWR. Monitoring will be a joint effort between UDNR and the Service. The PDM plan discusses the current status of the species and describes the methods proposed for monitoring if the species is removed from the Federal List of Endangered and Threatened Plants. Monitoring will occur annually for at least 5 years. Given the uncertainty of potential effects from climate change-related drought, we have developed three possible scenarios for PDM as follows. At the end of 5 years, the species' population status will be evaluated, with three possible outcomes: (1) If the population is stable or increasing with no new or increasing stressors, PDM will conclude; (2) if the population is decreasing, but may be correlated with precipitation levels and remains above 20,000 plants on the Wildlife Management Area, PDM will be extended for an additional 3–5 years and then the population status will be reevaluated; or (3) if the population is decreasing without correlation to precipitation levels and there are fewer than 20,000 plants on the Wildlife Management Area, a formal status review will be initiated. The reasoning behind the second and third options ties back to our conclusion that current information indicates the species and

genus are adapted to drought and are able to re-colonize disturbed areas. Therefore, if the population numbers are decreasing but may be fluctuating due to decreased rainfall or drought, additional monitoring may show that the population bounces back during the extended monitoring period allowed for in scenario two. However, if the population is decreasing beyond what might occur as a result of drought, a formal status review would be immediately initiated as described in scenario three.

It is our intent to work with our partners towards maintaining the recovered status of *Astragalus desereticus*. We seek public and peer review comments on the draft PDM plan, including its objectives and procedures (see Public Comments, above), with the publication of this proposed rule.

#### Required Determinations

##### Clarity of the Rule

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful to your understanding of the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand? Send a copy of any comments on how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also email the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

##### National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

##### 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 the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribes will be affected by this rule because there are no tribal lands within or adjacent to *Astragalus desereticus* habitat.

#### References Cited

A complete list of all references cited in this proposed rule is available at <http://www.regulations.gov> at Docket No. FWS-R6-ES-2016-0013, or upon request from the Utah Ecological Services Field Office (see **ADDRESSES**).

#### Authors

The primary authors of this proposed rule are staff members of the Service's Mountain Prairie Region and the Utah Ecological Services Field Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

#### § 17.12 [Amended]

■ 2. Section 17.12(h) is amended by removing the entry for “*Astragalus desereticus*” under “FLOWERING PLANTS” from the List of Endangered and Threatened Plants.

Dated: September 7, 2017.

**James W. Kurth,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2017–21073 Filed 9–29–17; 8:45 am]

**BILLING CODE 4333–15–P**

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

#### 50 CFR Part 36

[Docket No. FWS–R7–NWRS–2017–0058; FF07R00000 178 FXRS12610700000]

#### Refuge-Specific Regulation; Public Use; Kenai National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Regulatory review.

**SUMMARY:** The U.S. Fish and Wildlife Service (FWS) intends to initiate a rulemaking process that will consider changes to public use regulations that are applicable to Kenai National Wildlife Refuge and that were promulgated on May 5, 2016.

**DATES:** October 2, 2017.

**ADDRESSES:** The final rule that is the subject of this document may be found at [www.regulations.gov](http://www.regulations.gov) in Docket No. FWS–R7–NWRS–2017–0058.

**FOR FURTHER INFORMATION CONTACT:** Ryan Mollnow, Division of Natural Resources Chief, National Wildlife Refuge System—Alaska, 1011 E. Tudor Road, Anchorage, AK 99503; telephone: (907) 786–3326; facsimile: (907) 786–3901; email: [ryan\\_mollnow@fws.gov](mailto:ryan_mollnow@fws.gov).

**SUPPLEMENTARY INFORMATION:** On May 5, 2016, the FWS published a final rule to amend its regulations in title 50 of the Code of Federal Regulations (CFR) in part 36 regarding public use of Kenai National Wildlife Refuge (81 FR 27030). The final rule became effective on June 6, 2016. The provisions of the final rule:

- (1) amended regulations regarding use of aircraft, motorboats, motorized vehicles, and snowmobiles;
- (2) codified historic restrictions on hunting and trapping within the Skilak Wildlife Recreation Area (WRA) consistent with the 2007 Skilak WRA final revised management plan;
- (3) expanded a prohibition on the discharge of firearms to include areas of intensive public use along the Russian and Kenai Rivers;

(4) clarified the intent of existing regulations that require a special use permit for hunting black bears over bait by specifying that only the take of black bears is authorized under this requirement;

(5) amended regulations associated with camping, use of public use cabins, and public use facilities;

(6) established permanent regulations for managing wildlife attractants in the Russian River Special Management Area to reduce potential for human–bear conflicts; and

(7) established regulations allowing for noncommercial gathering of edible wild foods and shed antlers.

The FWS intends to initiate a rulemaking process that will consider

changes to the May 5, 2016, final rule (81 FR 27030) that was codified at 50 CFR part 36. Throughout this process, the FWS will consider the purposes of Secretarial Order 3347 (“Conservation Stewardship and Outdoor Recreation”): Enhanced conservation stewardship, increased opportunities for outdoor recreation, including hunting and fishing, for all Americans, and improved management of game species and their habitat. The FWS will also identify ways to improve cooperation, consultation, and communication with State of Alaska wildlife managers regarding recreational hunting and fishing.

At this time, the FWS is not accepting comments on the upcoming rulemaking process. When we publish a proposed rule in the **Federal Register**, the FWS will comply with all applicable laws governing the rulemaking process, including the requirement under 5 U.S.C. 553 to provide an opportunity for public comment on any proposed regulatory changes.

**Authority:** 16 U.S.C. 460k *et seq.*, 668dd–668ee, 3101 *et seq.*

**Todd Willens,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2017–21124 Filed 9–29–17; 8:45 am]

**BILLING CODE 4333–15–P**

# Notices

Federal Register

Vol. 82, No. 189

Monday, October 2, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

September 27, 2017.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725–17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by November 1, 2017. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Agricultural Marketing Service

*Title:* Report Forms under a California Federal Milk Marketing Order (from Milk Handlers and Milk Marketing Cooperatives); Referendum Procedures.

*OMB Control Number:* 0581–New.

*Summary of Collection:* The Agricultural Marketing Agreement Act of 1937 (AMAA) as amended, (7 U.S.C. 601–674, and 7253), authorizes the Federal Milk Marketing Order (FMMO) Program. The authority for conducting a producer referendum to ascertain whether the issuance of an order is approved or favored is outlined in 7 U.S.C. 608c(9). The California dairy industry requested promulgation of a FMMO for California similar, to the 10 existing FMMO's throughout the United States. The proposed FMMO incorporates the entire state of California and would adopt the same dairy product classification and pricing provisions used throughout the current FMMO system. AMS will issue a Final Decision on promulgating a California FMMO.

*Need and Use of the Information:* A referendum will be conducted and the information collected would be used by the Agricultural Marketing Service Dairy Program to determine whether producers and/or cooperative associations support implementation of the California FMMO. If the collection is not conducted, producers and/or cooperative associations would be unable to vote on the California FMMO. The referendum is necessary to determine whether the California FMMO should be established.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 1,453.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 363.

**Charlene Parker,**

*Departmental Information Collection  
Clearance Officer.*

[FR Doc. 2017–21023 Filed 9–29–17; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

September 2, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 1, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to

the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### National Agricultural Statistics Service

*Title:* Livestock Slaughter.

*OMB Control Number:* 0535-0005.

*Summary of Collection:* The primary functions of the National Agricultural Statistics Service (NASS) are to prepare and issue current official State and national estimates of crop and livestock production, disposition and prices and to collect information on related environmental and economic factors. General authority for data collection activities is granted under U.S. Code Title 7, Section 2204(a). This statute specifies the "The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . . and shall distribute them among agriculturists". Information from federally and non-federally inspected slaughter plants are used to estimate total red meat production. NASS will use a federally and non-Federally-inspected livestock slaughter survey to collect data.

*Need and Use of the Information:* NASS will combine information collected from both types of plants to estimate total red meat production, consisting of the number of head slaughtered plus live weights of cattle, calves, hogs, sheep, goats, and bison. Accurate and timely livestock estimates provide USDA and the livestock industry with basic data to project future meat supplies and producer prices. Agricultural economists in both the public and private sectors use this information in economic analysis and research.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 1,000.

*Frequency of Responses:* Reporting: Monthly, Quarterly and Annually.

*Total Burden Hours:* 1,748.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2017-21024 Filed 9-29-17; 8:45 am]

**BILLING CODE 3410-20-P**

#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

[Docket No. APHIS-2017-0071]

##### Availability of an Environmental Assessment for the Biological Control of Yellow Toadflax

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

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental assessment relative to the control of yellow toadflax (*Linaria vulgaris*). The environmental assessment considers the effects of, and alternatives to, the field release of a stem gall weevil, *Rhinusa pilosa*, into the continental United States for use as a biological control agent to reduce the severity of yellow toadflax infestations. We are making the environmental assessment available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before November 1, 2017.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0071>.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2017-0071, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0071> or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Colin D. Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737-1231; (301) 851-2327, email: [Colin.Stewart@aphis.usda.gov](mailto:Colin.Stewart@aphis.usda.gov).

**SUPPLEMENTARY INFORMATION:** Yellow toadflax is an invasive plant in pastures

and crops, particularly in the northern prairies of North America. First introduced to northeastern North America in the 1600s, yellow toadflax has since spread throughout the United States. Invasions of yellow toadflax in pastures and rangelands displace native and planted—and more valued and nutritious—forage species. Yellow toadflax is difficult to control using chemical, mechanical, cultural, or existing biological control practices, and infestations of the plant have caused economically significant losses to peppermint producers, mainly because chemical control is generally incompatible with production cropping practices. The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the field release of a stem gall weevil, *Rhinusa pilosa*, into the continental United States to reduce the severity of yellow toadflax infestations and to reduce economic losses in the areas of greatest impact since other alternatives are not effective or feasible.

APHIS' review and analysis of the proposed action are documented in detail in a draft environmental assessment (EA) entitled "Field release of the stem gall weevil *Rhinusa pilosa* (Coleoptera: Curculionidae) for classical biological control of yellow toadflax (*Linaria vulgaris*) (Plantaginaceae) in the contiguous United States" (March 2017). We are making this EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the [Regulations.gov](http://www.Regulations.gov) Web site or in our reading room (see **ADDRESSES** above for a link to [Regulations.gov](http://www.Regulations.gov) and information on the location and hours of the reading room). You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 26th day of September 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017-21105 Filed 9-29-17; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Happy Camp/Oak Knoll Ranger District; California; Elk Creek Watershed Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The purpose of the Elk Creek Watershed Project is to address the need to manage forest stands to be more resilient to future disturbances, improve water quality to maintain and restore riparian and aquatic habitat, improve terrestrial habitat for northern spotted owl and Roosevelt elk, reduce fuel accumulations, and improve the vigor and prevalence of Karuk cultural resources.

**DATES:** Comments concerning the scope of the analysis must be received by November 16, 2017. The Draft Environmental Impact Statement is expected June 2018 and the Final Environmental Impact Statement is expected February 2019.

**ADDRESSES:** Send written comments to P.O. Box 377, Happy Camp, CA 96039. Comments may also be sent via email to [jchastain@fs.fed.us](mailto:jchastain@fs.fed.us), or via facsimile to (530) 493-1796. Submit electronic comments at the Klamath National Forest's project Web page: <http://www.fs.fed.us/nepa/fs-usda-pop.php/?project=46553>.

**FOR FURTHER INFORMATION CONTACT:** Dock Chastain, (530) 493-1742, [jchastain@fs.fed.us](mailto:jchastain@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

#### SUPPLEMENTARY INFORMATION:

##### Purpose and Need for Action

The purpose and need for this project is to:

- Reduce fuel accumulations and create ridgetop fuel breaks to increase options for managing planned and unplanned ignitions;
- Improve water quality to maintain and restore riparian and aquatic habitat;

- Maximize efficiency of system roads and trails that provide public access to the Forest while minimizing resource impacts;
- Manage forest stands to be more resilient to future disturbances and improve terrestrial habitat for northern spotted owl and Roosevelt elk;
- Contribute to local and regional economies by providing forest products and enhancing recreational opportunities; and
- Improve the vigor and prevalence of Karuk cultural resources that were historically present in the planning area.

##### Proposed Action

The proposed action was designed to meet the purpose and need of the project. The proposed action would treat about 10,550 acres within the 45,992-acre project boundary. Acres by treatment type are described below and do not account for overlap in treatment types (acres receiving multiple treatments may be double counted). Treatment acreages are approximate at this point and may be adjusted and refined following scoping. The proposed action also addresses the existing condition of the National Forest Transportation System (Forest System) by treating legacy sites, changing road maintenance levels, and decommissioning roads. All treatments would manage for improving the health and vigor of hardwood species according to the Klamath National Forest Land and Resource Management Plan (Forest Plan). Riparian Reserves within and adjacent to treatment units would be evaluated on a site-by-site basis for treatment, and would include equipment and treatment exclusion zones.

This project would include the following eight types of vegetation treatments: (1) Commercial thinning; (2) noncommercial thinning; (3) hardwood enhancement; (4) meadow enhancement; (5) fuels reduction adjacent to private property; (6) defensible fuel profile zones; (7) roadside fuels reduction; and (8) underburning. This project would use a travel analysis for recommending management levels of existing Forest System roads and would develop new opportunities for recreation through the addition of new trails.

(1) Commercial Thinning (1,782 acres): Commercial thinning is an intermediate harvest with the objective of reducing stand density primarily to improve growth, enhance forest health, and other resources objectives. Treatment can recover potential mortality while producing merchantable material.

(2) Noncommercial Thinning (1,256 acres): Noncommercial thinning is an intermediate harvest which removes the less desirable trees of any species in a stand of poles or larger trees primarily to improve the composition and quality of the stand.

(3) Hardwood Enhancement (76 acres): Hardwood enhancement would focus on stimulating the growth and available resources for preferred hardwood species according to the Forest Plan.

(4) Meadow Enhancement (18 acres): Meadow enhancement treatments would focus on reducing conifer encroachment by removing conifer seedlings and saplings growing within the meadow footprint.

(5) Fuels reduction Adjacent to Private Property (153 acres): Fuel breaks created to protect private property would extend up to 500 feet adjacent to private property. The fuel treatments would involve cutting and pile burning of ladder fuels: Brush, hardwoods, and conifer trees up to ten inches diameter at breast height.

(6) Defensible Fuel Profile Zone (823 acres): The width of the defensible fuel profile zone would be up to 250 feet on either side of proposed ridge lines. The fuel treatments would involve cutting and pile burning of ladder fuels: Brush, hardwoods, and conifer trees up to ten inches diameter at breast height.

(7) Roadside Fuels Reduction (1,896 acres): The roadside fuel breaks would extend up to 300 feet above and 50 feet below either side of identified Forest System and county roads adjacent to Forest Service lands. The fuel treatments would involve cutting and pile burning of ladder fuels: Brush, hardwoods, and conifer trees up to ten inches diameter at breast height.

(8) Underburning (4,552 acres): Underburn units are intended to be burned at low to moderate intensities to reduce fuel loadings and reduce the risk of catastrophic fire. Travel Analysis—A risk and benefit analysis was conducted for Forest System roads within the East Fork Elk Creek and Lower Elk Creek 6th field watersheds. Road treatments include 22 miles of decommissioning, 15 miles of downgrading maintenance levels, 10 miles of upgrading maintenance levels, and treating associated legacy sites. In addition to Forest System road actions, four miles of non-system roads would be rehabilitated.

This project would also include recreation improvements, including the construction of 4.3 miles of new multi-use trails and up to 13 miles of mountain bike trail.

## Connected Actions

**Access:** Access for this project would be mainly accomplished by use of roads on the National Forest Transportation System. About three miles of temporary roads would be needed to facilitate commercial thinning operations. Most of these temporary roads would occur on existing roadbeds. However, several short new temporary spur roads would also be constructed. Both new and existing temporary roads would be hydrologically stabilized at the end of the project.

**Landings:** Existing landings would be used where possible. Landing size would be appropriately sized for operational safety. Cable landings would use roads where possible. Cable landings off the road system and ground-based landings would average one acre in size but would not exceed 1.5 acres in size. Both new and existing landings would be hydrologically stabilized at the end of the project.

## Responsible Official

Patricia A. Grantham, Klamath National Forest, Forest Supervisor.

## Nature of Decision To Be Made

The Forest Service is the lead agency for the project. Based on the result of the NEPA analysis, the Klamath National Forest, Forest Supervisor's Record of Decision regarding the Elk Creek Watershed Project will recommend implementation of one of the following:

(1) The proposed action and mitigations necessary to minimize or avoid adverse impacts;

(2) An alternative to the proposed action and mitigations necessary to minimize or avoid adverse impacts; or

(3) The no-action alternative.

The Record of Decision will also document the consistency of the proposed action or one of the alternatives with the Klamath National Forest Land and Resource Management Plan.

## Scoping Process

This notice of intent initiates the scoping process, which guides the development of the Environmental Impact Statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the Environmental Impact Statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and

addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: September 12, 2017.

**Jeanne M. Higgins,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2017-21005 Filed 9-29-17; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Nez Perce-Clearwater National Forests; Idaho; Lolo Insect & Disease Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** This is a corrected Notice of Intent (NOI). This notice updates the information about the purpose and need, proposed action, expected dates of the Draft Environmental Impact Statement (EIS) and Final EIS, addresses, contact information for the project, and the responsible official for the Lolo Insect & Disease project. This notice also provides clarification for individuals or organizations that provided comments in response to scoping previously conducted as it relates to having standing to object. Preliminary issues, alternatives, and permits are also available and presented in this notice.

**DATES:** Comments concerning the scope of the analysis must be received by October 17, 2017. The Draft EIS is expected January of 2018 and the Final EIS is expected August of 2018. This project was originally scoped under the provisions of 36 CFR 215. For this project, individuals or organizations who submitted written comments in response to scoping conducted under 36 CFR 215 will be considered to have standing to object under 36 CFR 218, Subparts A and B. Those who also wish to establish standing to object under 36 CFR part 218 should submit scoping comments no later than 15 days after publication of this Notice of Intent or during the 45-day comment period following distribution of the Draft EIS.

**ADDRESSES:** Send written comments to Lochsa Ranger District, c/o Sara Daugherty, 502 Lowry Street, Kooskia, Idaho 83539. Comments may also be sent via email to [comments-northern-clearwater-lochsa@fs.fed.us](mailto:comments-northern-clearwater-lochsa@fs.fed.us), or via facsimile to 208-926-6450.

**FOR FURTHER INFORMATION CONTACT:** For more information please contact Sara Daugherty at 208-926-6404 or [sddaugherty@fs.fed.us](mailto:sddaugherty@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Forest Service gives notice of its intent to prepare an EIS for the Lolo Insect & Disease project to analyze and disclose the effects of proposed forest management and watershed improvement activities within the Lolo Creek watershed, located approximately 16 miles northeast of Kamiah, Idaho. The proposed action would use a combination of timber harvest and reforestation to achieve the desired range of age classes, size classes, vegetative species distributions, habitat complexity (diversity), and landscape patterns across the forested portions of the project area. Road decommissioning, culvert replacements, road and trail improvements, and soils rehabilitation are also proposed to improve watershed health. The EIS will analyze the effects of the proposed action and alternatives. The Nez Perce-Clearwater National Forests invites comments and suggestions on the issues to be addressed. The agency gives notice of the National Environmental Policy Act (NEPA) analysis and decision making process on the proposal so interested and affected members of the public may participate and contribute to the final decision. The original notice was published in the **Federal Register** on April 25, 2013; 78 FR 24718. This process is being conducted pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality Regulations for Implementing the NEPA (40 CFR parts 1500-1508), and Forest Service NEPA guidelines. Additionally, pursuant to Section 106 of the National Historic Preservation Act, the public scoping process will allow members of the general public to provide comments on potential impacts to historic and cultural resources for the proposed action. An objection period for the Draft Record of Decision will be provided, consistent with 36 CFR part 218.

## Purpose and Need for Action

### *Vegetation and Wildlife Habitat Improvement*

**Existing Condition:** Most of the project area is in Forest Plan management area (MA) E1. MA E1 is timber-producing land to be managed

for healthy timber stands to optimize potential timber growing. Timber production is to be cost-effective and provide maximum protection of soil and water quality. Big game, primarily elk, is to be managed through limited road closures. Dispersed recreation and livestock grazing will be provide if compatible with timber management goals.

In the project area, fires that occurred in 1910 and 1934 and the introduction of white pine blister rust have created a homogeneous age class and species composition which has become highly susceptible to insect and disease change agents due to its current age. Mortality in grand fir and Douglas-fir dominated stands is increasing from root disease, Douglas-fir bark beetle, and grand fir engraver. In 2015, some of the proposed treatment areas were burned causing extensive tree mortality. Insects are invading stands within and outside of areas burned in 2015. Currently, a higher percentage of grand fir and Douglas-fir exist than natural long-term disturbances patterns would have created and that would have dominated these habitat types in the absence of historical disturbance events. Grand fir and Douglas-fir are more susceptible to insects and diseases, and grand fir is less likely to survive intense wildfires, than early seral species such as ponderosa pine, western larch, and western white pine.

Young forest habitat is lacking on this landscape, while the quality of available habitat for sensitive and old growth-associated species has declined. Patches of young forest that do exist are smaller with edges that are straighter and more even than natural disturbances would have created.

*Desired Condition:* The desired condition is a forest structure with a range of age and size classes with species diversity that is resistant and resilient to change agents such as insects, diseases, and wildfires. Early seral species (white pine, larch) should represent a greater percentage of the species mix.

*Need for Action:* Vegetation in this area needs to be managed to create a more diverse and resilient forest structure by creating a range of age and size classes, species diversity, and disturbance patterns that more closely emulate the results of natural disturbance. A need exists to shift tree species composition away from shade-tolerant species toward more resistant and resilient early seral species. Restoration of blister rust resistant white pine is a primary objective.

## Goods and Services

*Existing Condition:* Much of the Project area consists of grand fir-dominated stands. Insect and disease infestations are contributing to increased tree mortality, while decreasing timber volume and value.

*Desired Condition:* The desired condition is to provide a sustained yield of resource outputs as direct by the Clearwater Forest Plan.

*Need for Action:* Stands that are infested with insects and diseases need to be treated so that the harvested timber that still has a merchantable product in the trees will help sustain community stability through supporting jobs in the timber industry and support businesses.

## Watershed Improvement

The emphasis for watershed restoration in the Lolo Creek drainage is associated with roads and soil improvement.

*Existing Condition:* Gravel and native surface roads could contribute sediment to stream channels, which can affect water quality and fish habitat. There are 555 miles of system and 40 miles of non-system road in the Lolo Creek watershed. A total of 178 miles occurs within designated PACFISH buffers.

*Desired Condition:* The desired condition is to maintain a road system in the Lolo Creek watershed that is adequate to provide for continued recreation, commodity production, and administrative use as described in the Clearwater Forest Plan while maintaining fish and water quality objectives.

*Need for Action:* Improving watershed function and stream conditions by reducing road densities and repairing existing roads and culverts to reduce sediment and improve drainage is needed. New system roads would be constructed to provide a long term transportation system while reducing roads located within riparian habitat conservation areas.

## Roads Analysis

*Existing Condition:* Transportation planning has been completed at the Clearwater National Forest level by analyzing the entire transportation system as a whole. A roads analysis of the project area provides the current transportation system.

*Desired Condition:* A diversity of motorized access adequate to provide for continued recreation, commodity production, and administrative use as described in the Clearwater Forest Plan.

*Need for Action:* A comprehensive roads analysis including all motorized

access opportunities. Implementation of the results of the roads analysis would create a sustainable transportation system.

## Soil Improvement

*Existing Condition:* Past management activities have resulted in areas of detrimental soil disturbance, mostly in the form of compacted or displaced soil or loss of organic matter.

*Desired Condition:* Soils are productive (functioning soil biology, soil hydrology, and nutrient cycling) and stable.

*Need for Action:* Watershed function can be improved by restoring compacted soils and adding organic material on old skid trails and landings. Restoration of meadow function with seeding and planting of native species.

## Proposed Action

The Lochsa Ranger District proposes the following vegetation management actions to improve forest health, reforest areas burned in 2015, provide goods and services, and improve wildlife habitat:

- Variable retention regeneration harvest and site preparation activities would be conducted on approximately 3464 acres. Stands that are currently being affected by biotic change agents would be targeted for treatment. Regeneration harvest would create early successional plant communities and habitat. Project design criteria would be used in portions of units to address specific resource concerns, such as areas within the National Historic Landmark Corridor that require retention to meet visual objectives. Regeneration would focus on restoring white pine and other long-lived early seral species. Variable retention harvest would include areas of full retention (clumps), irregular edges, and retention of snags and legacy trees to provide structure and a future source of woody debris. Some openings may exceed 40 acres. Harvest would include utilizing ground based, skyline, and helicopter yarding systems; as well as approximately 2.6 miles of tractor swing trails. There is no harvest proposed in old growth.

- Approximately 19 miles of temporary roads would be constructed to carry out the proposed harvest. Temporary roads would be decommissioned after use.

The following road improvement actions area proposed to reduce sediment production and address transportation needs.

- Road improvements would occur on up to 125 miles of roads within the project area. Road improvement activities include: Adding cross drains on either side of perennial streams

where fish-bearing would be the highest priority followed by non-fish bearing perennial streams (these would be determined and prioritized based on field review); replacing crossings on perennial streams with structures appropriately sized for a 100-year event (these would be prioritized by the district fisheries biologist); and stabilize eroding sections of road that may be accomplished by blading followed by spot rocking or the addition of drainage structures where needed.

- Road maintenance and reconditioning would occur on approximately 157 miles of system roads. Maintenance consist of culvert cleaning, surface blading, and roadside brushing; and reconditioning includes minor road reshaping, waterbar removal, and road surface brush removal.

- Road decommissioning is proposed on approximately 60 miles of system road and approximately 30 miles of non-system road. In most cases this includes fully re-contouring the road.

- Approximately 4 miles of system roads would be converted to an off-highway vehicle (OHV) trail.

- Approximately 0.74 miles of new system roads would be constructed to contribute to the long term transportation system while reducing roads located within riparian habitat conservation areas.

The following actions are proposed to improve soil and vegetation conditions in the Musselshell Restoration Area portion (1,600 acres) of the project area:

- Approximately 745 acres of white pine restoration would be accomplished through intermediate harvest by creating small openings to plant blister rust resistant seedlings, benefit other species, and contribute to ecosystem health.

- Approximately 92 acres of riparian habitat conservation area (RHCA) restoration would occur where RHCAs of perennial streams are overstocked with trees. Trees would be commercially thinned to promote a healthy stand and promote long term RHCA function.

- Soil rehabilitation would occur on approximately 55 acres of currently detrimentally disturbed areas associated with past harvest related activities. Activities could include decompaction, mastication, fertilization, seeding, and addition of woody/organic material.

- Deferred maintenance would occur on mile of Trail #853. Work may include improvement and development of drainage structures within the existing tread. Rock and/or gravel material may be placed on the exiting tread surface to complement the

drainage structures and provide adequate base to support motorized OHV use, reduce erosion, and loss of fine materials.

The Lolo Insect & Disease project will also include a variety of project design criteria that have been developed from past projects, verified by field surveys, and will be used to limit possible adverse effects to soils, water quality, fish and wildlife habitat, recreation opportunities, and culturally significant areas.

#### Possible Alternatives

In addition to the No Action and the Proposed Action, alternatives that do not harvest in riparian habitat conservation areas, within the Eldorado Creek Roadless Area and special areas of historic or tribal significance (such as the National Historic Landmark corridor), as well as minimal temporary road construction with more helicopter logging are expected. These preliminary alternatives were developed based on prior scoping comments received. Alternatives will be developed based on previous and additional comments received during the scoping periods.

#### Responsible Official

Nez Perce-Clearwater Forest Supervisor.

#### Nature of Decision To Be Made

The Responsible Official will determine whether to adopt the proposed action or another alternative, in whole or in part, and what mitigation measurements and management requirements will be implemented.

#### Preliminary Issues

Issues received during the previous scoping period include harvesting in the Eldorado Creek Roadless Area, the National Historic Landmark corridor, and other special areas of historic or tribal significance; riparian habitat conservation area thinning, helicopter logging systems, winter logging, and minimal road construction.

#### Permits or Licenses Required

Any required permits for disturbance of water or wetlands would be obtained prior to initiating work (Army Corps of Engineers 404 permit, Idaho Department of Water Resources Stream Alteration Permit). Any additional mitigation measures identified in the permitting process would be incorporated into the project plans.

#### Scoping Process

This Notice of Intent initiates the scoping process, which guides the development of the EIS. The

interdisciplinary team will continue to seek information and comments from Federal, State, and local agencies, Tribal governments, and other individuals or organizations that may interested in, or affected by, the proposed action. There is a collaborative group in the area that the interdisciplinary team will interact with during the analysis process. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: September 13, 2017.

**Jeanne M. Higgins,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2017-21008 Filed 9-29-17; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Apache-Sitgreaves National Forests; Apache, Coconino, Greenlee and Navajo Counties, Arizona; Revised Draft Environmental Impact Statement for Public Motorized Travel Management Plan**

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised Notice of Intent (NOI).

**SUMMARY:** The Forest Service is revising the Environmental Impact Statement for the Public Motorized Travel Management Plan on the Apache-Sitgreaves National Forests.

**DATES:** Comments concerning the 2010 DEIS were received by December 13, 2010, 45 days from the date of publication of the Notice of Availability (NOA) of the draft EIS in the **Federal Register** (75 FR 66756). An additional 45 day comment period will occur after the publication of the revised DEIS in the **Federal Register**. The revised DEIS is expected in the summer of 2018 and the final EIS is expected in the winter of 2019.

**ADDRESSES:** Send written inquiries to Travel Management, Apache-Sitgreaves National Forests, P.O. Box 640, Springerville, AZ 85938. Inquiries may also be sent via email to [comments-southwestern-apache-sitgreaves@fs.fed.us](mailto:comments-southwestern-apache-sitgreaves@fs.fed.us) with "Travel Management" in the subject line. Inquiries may also be sent via facsimile to (928) 333-5966.

**FOR FURTHER INFORMATION CONTACT:** Jennie O'Connor Card, Team Leader at (406) 522-2537 or [jennieoconnorcard@fs.fed.us](mailto:jennieoconnorcard@fs.fed.us); or, Tim Gilloon, NEPA Program Manager at (928) 333-6333 or [tgilloon@fs.fed.us](mailto:tgilloon@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** : On October 10, 2007, the **Federal Register** published a Notice of Intent (NOI) to prepare an Environmental Impact Statement for the Public Motorized Travel Management Plan on the Apache-Sitgreaves National Forests (72 FR 57514-57517). On October 31, 2007, the **Federal Register** published a corrected NOI for that document (72 FR 61607). On February 29, 2008 the **Federal Register** published a revised NOI for those documents (73 FR 11088-11091). The Forest Service is hereby entirely revising all those NOI documents, **Federal Register** of October 10, 2007 (72 FR 57514-57517), **Federal Register** of October 31, 2007 (72 FR 61607) and **Federal Register** of February 29, 2008 (73 FR 11088-11091), to read as follows.

*Revision:* The Forest Service is preparing a Revised Draft Environmental Impact Statement (DEIS) for the Apache-Sitgreaves Public Motorized Travel Management Plan (the Project) on the Apache-Sitgreaves National Forests (the Forests). The Forest Service is issuing this NOI to advise the public and agencies that we will be preparing a revised DEIS using new information, based on changed conditions, in order to make the best possible decision. The new information includes: Changed conditions due to the Wallow Fire of 2011; the 2015 Land Management Plan for the Apache-Sitgreaves National Forests (the Forest Plan); changes in aquatic and terrestrial species status; more accurate road mapping based on Light Detection and Ranging (LIDAR) data and aerial photography; and Forest Service decisions made under the National Environmental Policy Act since the 2010 DEIS. The revised DEIS will use the 2010 DEIS as a foundation, and will

consider all public comments received; the revised DEIS does not change the nature or scope of the proposed action.

The Project proposes to designate which routes (roads and trails) and areas on federal lands administered by the Forests are open to motorized travel. This proposed action will bring the Forests into compliance with the Travel Management Rule (36 CFR 212, subpart B) to provide for a system of National Forest System (NFS) roads, motorized trails, and motorized areas designed for motor vehicle use. The proposed action prohibits cross-country travel and motor vehicle use off the designated system. This proposed action also will designate use of motor vehicles within a specified distance of certain designated routes for the purposes of dispersed camping and/or retrieval of a downed big game animal.

The Forest Service will produce a Motorized Vehicle Use Map (MVUM) that displays those routes and areas on the Forests that are open to motorized travel. The MVUM will be the primary tool used to determine compliance and enforcement with motor vehicle use designations. Existing routes, unauthorized routes, and areas not designated as open on the MVUM will be legally closed to motorized travel except as allowed by permit or other authorization. The decisions on motorized travel do not include over-snow travel or existing winter-use recreation.

#### Purpose and Need for Action

The purpose of this project is to comply with the Travel Management Rule by providing a system of roads, trails, and areas designated for motor vehicle use that reduces impacts to biological, physical, and cultural resources on the forests (36 CFR 212, sections 212, 251, 261). At 36 CFR 261.13, the Forests are required to prohibit motor vehicle use off the system of designated roads, trails, and areas and motor vehicle use that is not in accordance with the designations.

There is a need for a safe and efficient transportation system for public use, Agency administration, and resource protection, while recognizing historic and current uses of the forests. Specifically, there is a need for: (1) Identifying the system of roads that would be open to motor vehicle use; (2) identifying the system of motorized trails for vehicles 50 inches or less in width; and (3) optional designation of the limited use of motor vehicles within a specified distance of designated routes solely for the purposes of dispersed camping or retrieval of big game by an

individual who has legally killed the animal.

There is a need to counter detrimental effects to resources from continued use of some roads and motorized trails, as well as cross-country travel. Some detrimental effects from motorized use of the Forests include increased sediment deposits in streams which degrade water quality and fish habitat, the spread of invasive plants across the forests, disturbances to a variety of plant and wildlife species, and the risk of damaging cultural resource sites.

#### Changed Conditions

The changed conditions and new information since the 2010 DEIS, which lead to the need for a revised environmental analysis, are incorporated in the updated alternatives being considered in detail. The first substantive change stemmed from the Wallow Fire of 2011, which resulted in changes to the physical environment within the project area. The fire resulted in changes in the ecology of the landscape, creating a need to conduct significant restoration and monitoring efforts in order to return the Forests to its natural fire regime. The Forest Plan is another substantive change to the existing conditions. This has changed the desired conditions, standards and guidelines, and suitability directing how the Forests are managed. The Forest Plan provides overarching management direction for how motorized travel will be managed on the Forests.

In addition, changes in aquatic and terrestrial species status under the Endangered Species Act for threatened and endangered species, and under Forest Service policy for sensitive species, resulted in another changed condition. Critical and sensitive habitats for some species can be found across the Forests which must now be considered and analyzed. Additionally, the Forests updated the existing conditions in the databases of record to match the on-the-ground conditions using LIDAR data and aerial photography. The result of this corrects or clarifies the existing physical NFS roads, changing the baseline of which the alternatives considered are compared against.

Other decisions made under the National Environmental Policy Act since the 2010 draft EIS by the Forests changed the existing conditions and led to changes in the action alternatives. While the Project is proposing to look at the entire National Forest System of roads, numerous decisions about specific roads and trails have been made since 2010 that provide definitive environmental analysis and designation

for those roads and trails that does not require redundant analysis.

Collectively, these changes will be analyzed and incorporated into the revised DEIS, which will be circulated for public comment. The previous public comments and analysis will be used as the foundation for this revision. At the time that the revised DEIS is circulated, the public will have the opportunity to comment on the entire DEIS, including portions that have not been revised.

#### Preliminary Issues

The Forest analyzed all scoping comments received in 2007 to identify issues, which are defined as cause-effect relationships directly or indirectly caused by implementing the proposed action. The issues defined as within the scope of the project, and directly or indirectly caused by implementing the proposal, were used to develop the range of action alternatives. Four issues were identified: (1) Restricting motorized access for dispersed camping; (2) restricting motorized big game retrieval; (3) impacts to resources from motorized use; and, (4) economics: loss of revenues and jobs.

#### Proposed Action

The revised proposed action would designate a system of roads, trails, and areas for motorized use as well as motorized access for dispersed camping and motorized access for big game retrieval. The road system would have 15 percent fewer roads and 68 percent more motorized trails than the current system. That would result in 2,890 miles of NFS roads open to public motorized travel, including 2,143 miles of roads that are open to both highway legal and off-highway vehicles. Also, this would result in 270 miles of motorized trails across the Forests, with 20 miles open to all vehicles and 182 miles open to vehicles less than 50 inches wide.

The proposed action would designate 300 feet from either side of around 35 percent of the designated open roads (1,027 miles) for the sole purpose of accessing dispersed camping locations with motor vehicles. Motorized big game retrieval would be allowed within a 1-mile distance off the designated road and motorized trail system (1.2 million acres) for elk. No other species would be retrieved using motor vehicles. There would be one motorized use area designated (17 acres). All other cross country travel would be prohibited.

#### Possible Alternatives

The revised DEIS will analyze three alternatives in detail. These revised

alternatives used the 2010 DEIS as a foundation and the public comments received from that DEIS.

Alternative 1 (no action) represents the existing transportation system and proposes no changes. The existing system includes 3,418 miles of open roads and 127 miles of motorized trails. Cross-country travel off system roads on around 1.6 million acres would continue, except where currently prohibited. This alternative is not be compliant with the travel management rule because it does not designate a system of roads, trails and areas for motorized use.

Alternative 2 is the Proposed Action, which would designate a system of roads, trails, and areas for motorized use as well as motorized access for dispersed camping and motorized access for big game retrieval. The road system would have 15 percent fewer roads and 68 percent more motorized trails than the current system. That would result in 2,890 miles of NFS roads open to public motorized travel, including 2,143 miles of roads that are open to both highway legal and off-highway vehicles.

Alternative 3 is being designated to address the following issues: (1) Restricting motorized access for dispersed camping; (2) restricting motorized big game retrieval; and, (3) impacts to resources from motorized use.

#### Scoping Process

The proposed action outlined in this revised NOI is identical to the scope of the proposed action that was originally scoped, and therefore a new scoping period is not required. The original scoping process solicited over 20,000 public comments, which are being used to guide the development of the revised DEIS. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will also be accepted and considered.

#### Responsible Official

The Responsible Official is the Forest Supervisor of the Apache-Sitgreaves National Forests, P.O. Box 640, Springerville, AZ 85938.

#### Nature of Decision To Be Made

Based on the effects to social, natural, and cultural resources, the Forest Supervisor will decide what changes to make to the current motorized travel system to be compliant with the Travel Management Rule. The decision will also include whether to provide

motorized access for dispersed camping, whether to designate motorized use areas, and whether to provide access for motorized big game retrieval. The Record of Decision, which will be published after analyzing the public's comments, will document the decision with the rationale.

Dated: September 15, 2017.

**Jeanne M. Higgins,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2017-21009 Filed 9-29-17; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Kemmerer Ranger District; Bridger-Teton National Forest; Wyoming; Kemmerer Grazing and Rangeland Vegetation Management Project**

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Bridger-Teton National Forest will prepare an Environmental Impact Statement (EIS) to analyze the effects of continued authorization of grazing on 17 sheep allotments on the Kemmerer Ranger District in southwest Wyoming.

**DATES:** Although comments are accepted at any time, two designated comment periods concerning the scope of the analysis were established: June 26, 2017 through July 26, 2017 and November 17, 2008 through January 2, 2009. Comments will be accepted for an additional 30 days after October 2, 2017. The Draft EIS is expected in June 2018. Following its release, an opportunity to comment on the Draft EIS will be provided. The Final EIS is expected June 2019.

**ADDRESSES:** Send written comments to Kemmerer Ranger District, 308 U.S. Highway 189 North, Kemmerer, WY 83101. Comments may also be sent via email to [comments-intermtn-bridger-teton-kemmerer@fs.fed.us](mailto:comments-intermtn-bridger-teton-kemmerer@fs.fed.us), or via facsimile to 307-828-5135. Please put "Comments on Kemmerer Grazing" in the subject line.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

**FOR FURTHER INFORMATION CONTACT:** R. Aaron Zobell, Rangeland Management Specialist, Kemmerer Ranger District, 307-828-5100, [richardazobell@fs.fed.us](mailto:richardazobell@fs.fed.us). Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Ongoing information related to the proposed project can be found on the the project Web page at: <http://www.fs.usda.gov/project/?project=26874>.

#### **SUPPLEMENTARY INFORMATION:**

##### **Purpose and Need for Action**

A Notice of Intent (NOI) to prepare an EIS was published on November 17, 2008 (73 FR 67835) and April 9, 2010 (75 FR 10144). This NOI updates and supplements the previously published NOI to prepare an EIS and adds one additional allotment, Trespass Creek Allotment. The project area encompasses 181,227 acres of National Forest System lands within Lincoln County of western Wyoming. The 17 allotments included in the analysis are: Aspen Springs; Basin Creek; Buckskin Knoll; Devils Hole; Elk Creek; Green Knoll; Indian Creek; Lake Alice; Lake Mountain; Lower Salt Creek; Pole Creek; Porcupine Creek; Sams-Allen Creek; Smiths Fork; South Fontenelle; Spruce Creek; and Trespass Creek allotments. The analysis contained in the EIS will be used by the responsible official to decide whether or not, and if so, how to authorize livestock grazing and manage rangeland vegetation within the project area.

The purpose of the Kemmerer Grazing and Rangeland Vegetation Management project is to authorize livestock grazing in a manner that will maintain desired conditions or improve resource conditions towards desired conditions. There is a need for continued livestock grazing on the Bridger-Teton National Forest to meet the direction provided by the Bridger Teton Land and Resource Management Plan (Forest Plan) to contribute to the prosperity of communities (Goal 1.1) and provide forage for about 260,000 animal unit months of livestock grazing annually (Objective 1.1(h)). There is also a need to avoid unacceptable effects from livestock use as outlined in the Forest Plan (Goal 4.7) which directs that grazing use of the National Forest sustain or improve overall range, soils, water, wildlife, and recreation values or experiences. The difference between the existing condition and desired condition in terms of livestock grazing

and resource conditions describes the need for federal action. Desired conditions are defined by the Forest Plan, Forest Service Manual, and applicable laws. This effort is undertaken to comply with the 1995 Rescissions Act (Pub. L. 104-19).

##### **Proposed Action**

The proposed action is to authorize livestock grazing on 17 allotments within the project area (Aspen Springs; Basin Creek; Buckskin Knoll; Devils Hole; Elk Creek; Green Knoll; Indian Creek; Lake Alice; Lake Mountain; Lower Salt Creek; Pole Creek; Porcupine Creek; Sams-Allen Creek; Smiths Fork; South Fontenelle; Spruce Creek; and Trespass Creek allotments) with updated domestic sheep grazing and rangeland vegetation management direction. Desired conditions are identified. Grazing practices addressing frequency of grazing and rest from grazing would be guided by the amount and diversity of vegetation given the capability of soils, as well as indicators of soil quality such as amount of ground cover, sign of active erosion and healing of headcuts. Other best management practices addressing the timing, duration, and in specific settings the intensity, of use are identified. Adaptive management is part of the proposed action. Identified are: Criteria to guide management, pre-determined optional courses of action used to make adaptive changes in management over time, and the focused monitoring which provides the basis for adjusting management to attain desired resource conditions. Allotment management plans would become part of a term grazing permit and contain the livestock grazing and rangeland vegetation management direction identified by the responsible official's decision.

##### **Possible Alternatives**

To date the Bridger-Teton National Forest has identified two alternatives to the proposed action: Alternative A—No Domestic Livestock Grazing, and Alternative B—Continuation of Current Livestock Management. Alternative A would discontinue sheep grazing on the 17 allotments over the next five years with the exception of sheep trailing to other allotments on the Bridger-Teton National Forest and the Caribou National Forest. This alternative will demonstrate the effects of eliminating livestock grazing on the environment and more clearly illustrate the potential effects of implementing any grazing and rangeland vegetation management alternative. Alternative B would continue current grazing management practices including annual adjustments

in authorized livestock numbers and season of use, as needed.

##### **Responsible Official**

Kemmerer District Ranger Adrienne Holcomb

##### **Nature of the Decision To Be Made**

Whether domestic sheep grazing should be allowed to continue on all, part, or none of the 17 allotments within the project area; and if so, under what management strategy.

##### **Preliminary Issues**

Preliminary issues associated with the proposed action include:

- (1) The amount and diversity of vegetation in some locations is less than the current capability of soils;
- (2) Sediment delivery to drainages supporting fisheries, and retention of precipitation on uplands, as evidenced by headcutting/gullies and sign of active erosion; and
- (3) Wildlife values within some aspen stands are minimized by a lack of diverse aspen age classes; in some locations the diversity of herbaceous and shrub species in the understory is also diminished.

##### **Permits or Licenses Required**

If a decision is made to authorize regularly scheduled livestock grazing, such grazing must be authorized under a term grazing permit.

##### **Scoping Process**

Pursuant to 36 CFR 218.7(a)(2), this proposed project implements the land management plan and is subject to § 218 subparts A and B. Those who submit specific written comments regarding the proposed project during this scoping period or other designated opportunity for public comment in accordance with § 218.5(a) are eligible to object. Issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project unless based on new information arising after the designated comment opportunities.

Specific written comments as defined by § 218.2 should be within the scope of the proposed action, have a direct relationship to the proposed action, and must include supporting reasons for the responsible official to consider. It is the responsibility of all individuals and organizations to ensure that their comments are received in a timely manner.

Comments received, including names and addresses of those who comment, will be considered part of the public record on these proposed actions and will be available for public inspection.

Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the agency with the ability to provide the respondent with subsequent environmental documents nor provide the respondent with standing to object the subsequent draft decision. Only those who respond to the request for comments or request to be placed on the mailing list will be added to the mailing list for this project.

An objection period will follow the regulation found in § 218.7. For objection eligibility (§ 218.5), only those who have submitted timely, specific written comments during any designated opportunity for public comment may file an objection.

Issues to be raised in objections must be based on previously submitted specific written comments regarding the proposed project and attributed to the objector, unless the issue is based on new information that arose after a designated opportunity to comment (§ 218.8(c)).

Dated: September 12, 2017.

**Jeanne M. Higgins,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2017-21007 Filed 9-29-17; 8:45 am]

**BILLING CODE 3411-15-P**

## THE BROADCASTING BOARD OF GOVERNORS

### Notice of Public Availability of the Broadcasting Board of Governors FY-2015 Service Contract Analysis and FY-2016 Service Contract Inventory

**AGENCY:** The Broadcasting Board of Governors.

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, the Broadcasting Board of Governors (BBG) is publishing this notice to advise the public of the availability of its FY-2015 Service Contract Analysis and FY 2016 Service Contract Inventory. They are available on the BBG Web site, through the following link: <https://www.bbg.gov/strategy-and-performance/research-reports/bbg-service-contract-inventory/>. The service contract inventory provides information on service contract actions over \$25,000 made in FY-2016. The information is organized by function to show how contracted resources are distributed throughout the Agency. The inventory has been developed in accordance with guidance on service contract inventories issued on November 5, 2010 and on December 19,

2011 by the Office of Management and Budget, Office of Federal Procurement Policy (OFPP).

#### FOR FURTHER INFORMATION CONTACT:

James McGuirk, Senior Procurement Analyst, IBB Office of Contracts via email at [jmcguirk@bbg.gov](mailto:jmcguirk@bbg.gov) or at telephone number (202) 382-7840.

Dated: September 27, 2017.

**Chris Luer,**

*Chief, IBB Office of Administration.*

[FR Doc. 2017-21102 Filed 9-29-17; 8:45 am]

**BILLING CODE 8610-01-P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the New Hampshire 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 New Hampshire Advisory Committee to the Commission will convene by conference call at 11:00 a.m. (EDT) on: Thursday October 26, 2017. The purpose of the meeting is to begin the work on the Valley Street project, including potential panelists, venue, and other details for a future briefing on the project.

**DATES:** Thursday, October 26, 2017, at 11:00 a.m. EDT.

Public Call-In Information:  
Conference call-in number: 1-888-539-3624 and conference call 6145125.

#### FOR FURTHER INFORMATION CONTACT:

Evelyn Bohor, at [ero@usccr.gov](mailto:ero@usccr.gov) or by phone at 202-376-7533.

**SUPPLEMENTARY INFORMATION:** Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1-888-539-3624 and conference call 6145125. Please be advised that before placing them into the conference call, the conference call operator will 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 conference call-in number.

Persons with hearing impairments may also follow the discussion by first

calling the Federal Relay Service at 1-800-977-8339 and providing the operator with the toll-free conference call-in number: 1-888-539-3624 and conference call 6145125.

Members of the public are invited to make statements during the open comment period of the meeting or 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, faxed to (202) 376-7548, or emailed to Evelyn Bohor at [ero@usccr.gov](mailto:ero@usccr.gov). Persons who desire additional information may contact the Eastern Regional Office at (202) 376-7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at <https://www.facadatabase.gov/committee/meetings.aspx?cid=262>; 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](http://www.usccr.gov), or to contact the Eastern Regional Office at the above phone numbers, email or street address.

### Agenda

October 26, 2017

- Open—Rollcall
- Project Discussion: Valley Street Jail Venues, Panelists, Other Details
- Open Comment
- Adjourn

Dated: September 27, 2017.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2017-21034 Filed 9-29-17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

*Agency:* U.S. Census Bureau.

*Title:* Longitudinal Employer-Household Dynamics (LEHD).

*OMB Control Number:* 0607–XXXX.  
*Form Number(s):* Not applicable as survey forms are not required to collect this data.

*Type of Request:* Regular Submission.

*Number of Respondents:* 52 state agency respondents per quarter (*i.e.*, 49 state, Virgin Islands, Puerto Rico, and the District of Columbia).

*Average Hours Per Response:* 8 hours to identify and submit data.

*Burden Hours:* Approximately 1,664 total hours annually.

*Needs and Uses:* The data products developed by the LEHD program provide statistics on employment, earnings, and job flows at detailed levels of geography and industry and for different demographic groups. The potential and realized uses of these data products and their supporting dissemination tools are far-reaching, both for unraveling many important questions in economic research and for the provision of new statistical products. Over the first five months of 2017, the Census Bureau received more than 105,000 visits to its LEHD dissemination tools. Just some examples of novel use of LEHD data include:

- The New Jersey State Data Center used OnTheMap for Emergency Management to quickly learn the impact of hurricane Sandy with regards to identification of Federal Disaster Declaration Areas and its effects on communities (*i.e.*, population and workforce).
- The state of Nevada has used the Job-to-Job Flows data product to understand the migration of its workforce that supports the hotel industry.
- The Philadelphia Center City District used LEHD data to understand the details of the area's workforce and economy in order to monitor the effectiveness of economic programs and policy initiatives.

Additional examples of how the LEHD data products and supporting dissemination tools have been used can be found at the LEHD Web site: [https://lehd.ces.census.gov/led\\_in\\_action/](https://lehd.ces.census.gov/led_in_action/).

*Affected Public:* There is no burden on the public to provide the required data because the LEHD program relies on administrative data provided by state agencies. The number of responses and burden hours have been updated from the pre-submission notice that was published on December 8, 2016, document citation: 81 FR 88662. The previous number of responses was noted at 52 per quarter, however, that number did not account for the annual responses which will be 208. The burden hours were clarified to only

include state agency burden hours—resulting in a total of 1,664 annual burden hours.

*Frequency:* Quarterly.

*Respondent's Obligation:* Voluntary via a Memorandum of Understanding (MOU).

*Legal Authority:* The authority to conduct the LEHD program is 13 U.S.C. Section 6. Confidentiality of all collected data is assured by 13 U.S.C. Section 9.

*This information collection request may be viewed at* [www.reginfo.gov](http://www.reginfo.gov).

Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202)395–5806.

**Sheleen Dumas,**

*Departmental PRA Lead, Office of the Chief Information Officer.*

[FR Doc. 2017–21082 Filed 9–29–17; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Institute of Standards and Technology, Commerce.

*Title:* Small Business Innovation Research (SBIR) Program Application Cover Sheet.

*OMB Control Number:* 0693–0072.

*Form Number(s):* None.

*Type of Request:* Extension of a current information collection.

*Number of Respondents:* 150.

*Average Hours Per Response:* 30 minutes.

*Burden Hours:* 75 hours.

*Needs and Uses:* The information collected in the Cover Sheet provides identifying information and demographic data for use in NIST's annual report to the SBA on the program. The technical abstract is used in prevention of fraud, waste, and abuse by providing a method to compare similar applications to other agency SBIR programs. The abstract and potential commercial applications of successful applicants are posted on the agency Web site.

*Affected Public:* Business or other for-profit.

*Frequency:* Annual.

*Respondent's Obligation:* Mandatory.

This information collection request may be viewed at [reginfo.gov](http://reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395–5806.

**Sheleen Dumas,**

*Departmental PRA Lead, Office of the Chief Information Officer.*

[FR Doc. 2017–21083 Filed 9–29–17; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* 2018 Survey of Income and Program Participation (SIPP) Panel.

*OMB Control Number:* 0607–XXXX.

*Form Number(s):*

SIPP–105(L1)2018 (Advance Director's Letter—No Incentive)  
 SIPP–105(L)(SP)2018 (Advance Director's Letter Spanish— No Incentive)  
 SIPP–105(L3)2018 (Advance Director's Letter—\$40 Incentive)  
 SIPP–101 (Factsheet)  
 SIPP–106(L1)2018 (Thank You Letter—No Incentive)  
 SIPP–106(L2)2018 (Thank You Letter—\$40 Incentive/PIN Information)

*Type of Request:* OMB Approval.

*Number of Respondents:* 66,800.

*Average Hours per Response:* 1 hour.

*Burden Hours:* 66,800.

*Needs and Uses:* The SIPP is a household-based survey designed as a continuous series of national panels. The SIPP represents a source of information for a wide variety of topics and allows the integration of information for separate topics to form a single, unified database allowing for the examination of the interaction between tax, transfer, and other government and private policies. Government domestic policy formulators depend heavily upon SIPP information concerning the distribution of income received either directly as money or indirectly as in-kind benefits and the effect of tax and transfer

programs on that distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population, which the SIPP has provided on a continuing basis since 1983. The SIPP has measured levels of economic well-being and permitted measurement of changes in these levels over time.

The 2018 SIPP interview includes a portion conducted using an Event History Calendar (EHC) that facilitates the collection of dates of events and spells of coverage. The EHC assists the respondent's ability to recall events accurately over the one year reference period and provides increased data quality and inter-topic consistency for dates reported by respondents. The EHC is intended to help respondents recall information in a more natural "autobiographical" manner by using life events as triggers to recall other economic events. The EHC was previously used in the 2014 Panel. The 2018 Panel SIPP design does not contain freestanding topical modules; however, a portion of traditional SIPP topical module content is integrated into the 2018 SIPP Panel interview. Examples of this content include questions on medical expenses, child care, retirement and pension plan coverage, marital history, adult and child well-being, and others.

*Affected Public:* Respondents, researchers, policymakers.

*Frequency:* The 2018 SIPP Panel is an annual survey that runs for four years consecutively (Waves 1–4).

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, Sections 141 and 182.

*This information collection request may be viewed at [www.reginfo.gov](http://www.reginfo.gov).* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395–5806.

**Sheleen Dumas,**

*PRA Departmental Lead, Office of the Chief Information Officer.*

[FR Doc. 2017–20976 Filed 9–29–17; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### First Responder Network Authority

[Docket Number: 160929903–6903–02]

RIN 0660–XC025

#### Notice of Availability of a Final Programmatic Environmental Impact Statement for the South Region of the Nationwide Public Safety Broadband Network

**AGENCY:** First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of availability of a final programmatic environmental impact statement.

**SUMMARY:** The First Responder Network Authority ("FirstNet") announces the availability of the Final Programmatic Environmental Impact Statement for the South Region ("Final PEIS"). The Final PEIS evaluates the potential environmental impacts of the proposed nationwide public safety broadband network in the South Region (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas).

**ADDRESSES:** The Final PEIS is available for download from [www.regulations.gov](http://www.regulations.gov) FIRSTNET–2017–0006.

**FOR FURTHER INFORMATION CONTACT:** For more information on the Final PEIS, contact Amanda Goebel Pereira, NEPA Coordinator, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, (571) 665–6072, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192.

**SUPPLEMENTARY INFORMATION:** The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (the "Act") created and authorized FirstNet to take all actions necessary to ensure the building, deployment, and operation of an interoperable, nationwide public safety broadband network ("NPSBN") based on a single, national network architecture. The Act meets a longstanding and critical national infrastructure need, to create a single, nationwide network that will, for the first time, allow police officers, fire fighters, emergency medical service professionals, and other public safety

entities to effectively communicate with each other across agencies and jurisdictions. The NPSBN is intended to enhance the ability of the public safety community to perform more reliably, effectively, and safely; increase situational awareness during an emergency; and improve the ability of the public safety community to effectively engage in those critical activities.

The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) ("NEPA") requires federal agencies to undertake an assessment of environmental effects of their proposed actions prior to making a final decision and implementing the action. NEPA requirements apply to any federal project, decision, or action that may have a significant impact on the quality of the human environment. NEPA also establishes the Council on Environmental Quality ("CEQ"), which issued regulations implementing the procedural provisions of NEPA (see 40 CFR parts 1500–1508). Among other considerations, CEQ regulations at 40 CFR 1508.28 recommend the use of *tiering* from a "broader environmental impact statement (such as a national program or policy statements) with subsequent narrower statements or environmental analysis (such as regional or basin wide statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared."

Due to the geographic scope of FirstNet (all 50 states, the District of Columbia, and five territories) and the diversity of ecosystems potentially traversed by the project, FirstNet elected to prepare five regional PEISs. The five PEISs are divided into the East, Central, West, South, and Non-Contiguous Regions. The South Region consists of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The Final PEIS analyzes potential impacts of the deployment and operation of the NPSBN on the natural and human environment in the South Region, in accordance with FirstNet's responsibilities under NEPA.

Now that this PEIS has been completed and once a Record of Decision (ROD) has been signed, the proposed FirstNet projects can begin to submit the site-specific environmental documentation to determine if the proposed project has been adequately evaluated in the PEIS or whether it instead warrants a Categorical Exclusion, an Environmental

Assessment, or an Environmental Impact Statement.

Dated: September 26, 2017.

**Amanda Goebel Pereira,**

*NEPA Coordinator, First Responder Network Authority.*

[FR Doc. 2017-20933 Filed 9-29-17; 8:45 am]

BILLING CODE 3510-60-P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-60-2017]

#### **Foreign-Trade Zone 123—Denver, Colorado; Application for Subzone; Ackerman North America LLC/dba Amann USA, Broomfield, Colorado**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City and County of Denver, Colorado, grantee of FTZ 123, requesting subzone status for the facility of Ackerman North America LLC/dba Amann USA, located in Broomfield, Colorado. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on September 26, 2017.

The proposed subzone (0.07 acres) is located at 452 Burbank Street, Broomfield, Colorado. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 13, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 27, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Christopher Kemp at [Christopher.Kemp@trade.gov](mailto:Christopher.Kemp@trade.gov) or (202) 482-0862.

Dated: September 26, 2017.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. 2017-21054 Filed 9-29-17; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-122-860]

#### **100- to 150-Seat Large Civil Aircraft From Canada: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of 100- to 150-seat large civil aircraft (aircraft) from Canada. The period of investigation is January 1, 2016, through December 31, 2016.

**DATES:** Applicable October 2, 2017.

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

Andrew Medley or Ross Belliveau, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4987, or (202) 482-4952, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on May 26, 2017.<sup>1</sup> On July 5, 2017, the Department postponed the preliminary determination of this investigation and the revised deadline is now September 25, 2017.<sup>2</sup> For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.<sup>3</sup> A list of topics

<sup>1</sup> See *100- to 150-Seat Large Civil Aircraft From Canada: Initiation of Countervailing Duty Investigation*, 82 FR 24292 (May 26, 2017) (*Initiation Notice*).

<sup>2</sup> See *100- to 150-Seat Large Civil Aircraft from Canada: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 82 FR 31045 (July 5, 2017).

<sup>3</sup> See Memorandum, "Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of 100- to 150-Seat Large Civil Aircraft from Canada," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

#### **Scope of the Investigation**

The product covered by this investigation is aircraft from Canada. For a complete description of the scope of the investigation, see Appendix I.

#### **Scope Comments**

In accordance with the preamble to the Department's regulations,<sup>4</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.*, scope).<sup>5</sup> Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. The Department intends to issue its preliminary decision regarding comments concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations in the preliminary determination of the companion AD investigation.

#### **Methodology**

The Department is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, the Department preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>6</sup>

#### **Alignment**

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), the Department is aligning the final CVD determination in this investigation with the final

<sup>4</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>5</sup> See *Initiation Notice*.

<sup>6</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

determination in the companion AD investigation of aircraft from Canada based on a request made by the petitioner.<sup>7</sup> Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than December 18, 2017, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, the Department shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

The Department calculated an individual estimated countervailable subsidy rate for Bombardier, Inc. (Bombardier), the only individually examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis*, or based entirely on facts otherwise available, the estimated weighted-average rate calculated for Bombardier is the rate assigned to all-other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Preliminary Determination

The Department preliminarily determines that the following estimated countervailable subsidy rates exist:

| Company                             | Subsidy rate (percent) |
|-------------------------------------|------------------------|
| Bombardier, Inc. <sup>8</sup> ..... | 219.63                 |
| All-Others .....                    | 219.63                 |

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal**

<sup>7</sup> See Letter from The Boeing Company (the petitioner), “100- To 150-Seat Large Civil Aircraft from Canada: Request for Alignment of Countervailing Duty Final Determination with Antidumping Duty Final Determination,” dated September 11, 2017.

<sup>8</sup> As discussed in the Preliminary Decision Memorandum, the Department has found the following companies to be cross-owned with Bombardier: C Series Aircraft Limited Partnership; Short Brothers PLC; BT (Investment) UK Limited.

**Register.** Further, pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>9</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party’s name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

<sup>9</sup> See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

International Trade Commission Notification

In accordance with section 703(f) of the Act, the Department will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: September 25, 2017.  
**Carole Showers,**  
*Executive Director, Office of Policy,*  
*performing the duties of Deputy Assistant Secretary for Enforcement and Compliance.*

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aircraft, regardless of seating configuration, that have a standard 100- to 150-seat two-class seating capacity and a minimum 2,900 nautical mile range, as these terms are defined below.

“Standard 100- to 150-seat two-class seating capacity” refers to the capacity to accommodate 100 to 150 passengers, when eight passenger seats are configured for a 36-inch pitch, and the remaining passenger seats are configured for a 32-inch pitch. “Pitch” is the distance between a point on one seat and the same point on the seat in front of it.

“Standard 100- to 150-seat two-class seating capacity” does not delineate the number of seats actually in a subject aircraft or the actual seating configuration of a subject aircraft. Thus, the number of seats actually in a subject aircraft may be below 100 or exceed 150.

A “minimum 2,900 nautical mile range” means:

- (i) Able to transport between 100 and 150 passengers and their luggage on routes equal to or longer than 2,900 nautical miles; or
- (ii) covered by a U.S. Federal Aviation Administration (FAA) type certificate or supplemental type certificate that also covers other aircraft with a minimum 2,900 nautical mile range.

The scope includes all aircraft covered by the description above, regardless of whether they enter the United States fully or partially assembled, and regardless of whether, at the time of entry into the United States, they are approved for use by the FAA.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8802.40.0040. The merchandise may alternatively be classifiable under HTSUS subheading 8802.40.0090. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

## Appendix II

### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Injury Test
- V. Subsidies Valuation
- VI. Analysis of Programs
- VII. Conclusion

[FR Doc. 2017-21055 Filed 9-29-17; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-859]

### Steel Concrete Reinforcing Bar From Taiwan: Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** Based on an affirmative final determination by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing the antidumping duty (AD) order on steel concrete reinforcing bar (rebar) from Taiwan.

**DATES:** *Applicable:* October 2, 2017.

**FOR FURTHER INFORMATION CONTACT:** Jun Jack Zhao or Kathryn Wallace at (202) 482-1396 and (202) 482-6251, respectively, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

### SUPPLEMENTARY INFORMATION:

#### Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.210(c), on June 27, 2017 the Department published its affirmative final determination in the less-than-fair-value (LTFV) investigation of rebar from Taiwan.<sup>1</sup> On September 11, 2017, the ITC notified the Department of its final determination that an industry in the United States is materially injured by reason of LTFV imports of subject merchandise from Taiwan within the meaning of 735(b)(1)(A)(i) of the Act.<sup>2</sup>

<sup>1</sup> See *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (June 27, 2017) (*Final Determination*).

<sup>2</sup> See Letter from the ITC to the Honorable Gary Taverman, September 11, 2017 (Notification of ITC

On September 15, the ITC published its final determination in the **Federal Register**.<sup>3</sup>

#### Scope of the Order

The product covered by this order is rebar from Taiwan. For a complete description of the scope of the order, see the Appendix to this notice.

#### Antidumping Duty Order

In accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in this investigation, in which it found that an industry in the United States is materially injured by reason of imports of rebar from Taiwan. Therefore, in accordance with section 735(c)(2) of the Act, we are issuing this antidumping duty order. Because the ITC determined that imports of rebar from Taiwan are materially injuring a U.S. industry, unliquidated entries of such merchandise from Taiwan, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of rebar from Taiwan. Antidumping duties will be assessed on unliquidated entries of rebar from Taiwan entered, or withdrawn from warehouse, for consumption on or after March 7, 2017, the date of publication of the *Preliminary Determination*,<sup>4</sup> but will not include entries occurring after the expiration of the provisional measures period and before publication in the **Federal Register** of the ITC's injury determination, as further described below.

#### Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to continue to suspend liquidation of all relevant entries of rebar from Taiwan, effective the date of publication of the ITC's notice of final determination in the **Federal Register**.

Final Determination); see also *Steel Concrete Reinforcing Bar from Taiwan*, Investigation No. 731-TA-1339 (Final) (September 2017).

<sup>3</sup> See *Steel Concrete Reinforcing Bar from Taiwan*, 82 FR 43403 (September 15, 2017).

<sup>4</sup> See *Steel Concrete Reinforcing Bar from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 12800 (March 7, 2017) (*Preliminary Determination*).

These instructions suspending liquidation will remain in effect until further notice.

The Department will also instruct CBP to require cash deposits for estimated antidumping duties equal to the estimated weighted-average dumping margins indicated below. Accordingly, effective September 15, 2017, the date of publication of the ITC's final affirmative determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed below.<sup>5</sup> The relevant all-others rates apply to all producers or exporters not specifically listed below.

#### Provisional Measures

Section 733(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of rebar from Taiwan, the Department extended the four-month period to six months in this case.<sup>6</sup> The Department published the preliminary determination on March 7, 2017. Therefore, the extended period, beginning on the date of publication of the preliminary determination, ended on September 3, 2017. Furthermore, section 737(b) of the Act states that the collection of final cash deposits will begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of rebar from Taiwan entered, or withdrawn from warehouse, for consumption after September 3, 2017, until and through September 14, 2017, the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**.

#### Estimated Weighted-Average Dumping Margins

The weighted-average antidumping duty margin percentages are as follows:

<sup>5</sup> See section 736(a)(3) of the Act.

<sup>6</sup> See *Preliminary Determination* 82 FR at 12801.

| Exporter/manufacturer                       | Weighted-average dumping margins (percent) |
|---------------------------------------------|--------------------------------------------|
| Power Steel Co., Ltd .....                  | 3.50                                       |
| Lo-Toun Steel and Iron Works Co., Ltd ..... | 32.01                                      |
| All-Others .....                            | 3.50                                       |

### Notification to Interested Parties

This notice constitutes the antidumping duty order with respect to rebar from Taiwan, pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at <http://enforcement.trade.gov/stats/iastats1.html>.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: September 25, 2017.

**Carole Showers,**

*Executive Director, Office of Policy performing the duties of Deputy Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### Scope of the Order

The merchandise subject to this order is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade or lack thereof. Subject merchandise includes deformed steel wire with bar markings (e.g., mill mark, size, or grade) and which has been subjected to an elongation test.

The subject merchandise includes rebar that has been further processed in the subject countries or a third country, including but not limited to cutting, grinding, galvanizing, painting, coating, or any other processing that would not otherwise remove the merchandise from the scope of this order if performed in the country of manufacture of the rebar.

Specifically excluded are plain rounds (i.e., nondeformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (e.g., mill mark, size, or grade) and without being subject to an elongation test.

The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6030, 7227.90.6035, 7227.90.6040, 7228.20.1000, and 7228.60.6000.

HTSUS numbers are provided for convenience and customs purposes;

however, the written description of the scope remains dispositive.

[FR Doc. 2017-20925 Filed 9-29-17; 8:45 am]

**BILLING CODE 3510-DS-P**

### DEPARTMENT OF COMMERCE

#### International Trade Administration

[A-821-802]

#### Uranium From the Russian Federation: Continuation of Suspension of Antidumping Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of determinations by the Department of Commerce (Department) that termination of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended (the Agreement), and the suspended investigation on uranium from the Russian Federation (Russia) would likely lead to a continuation or recurrence of dumping, and by the International Trade Commission (ITC) that termination of the suspended investigation would likely lead to material injury to an industry in the United States, the Department is publishing this notice of continuation of the Agreement on uranium from Russia.

**DATES:** Applicable October 2, 2017.

**FOR FURTHER INFORMATION CONTACT:** Sally C. Gannon or Jill Buckles, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0162 or (202) 482-6230, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

On February 3, 2017, the Department published the notice of initiation of the fourth sunset review of the Agreement, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>1</sup> On the basis of the notice of intent to participate and adequate substantive responses filed by domestic interested parties and the lack of response from any respondent interested party, the Department conducted an expedited sunset review of the Agreement pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C). As a result of its review, pursuant to sections 751(c) and 752 of the Act, the Department determined that termination of the Agreement and the suspended

investigation on uranium from the Russian Federation would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margin likely to prevail should the Agreement be terminated.<sup>2</sup>

On September 26, 2017, pursuant to section 751(c) of the Act, the ITC published its determination that termination of the suspended investigation on uranium from the Russian Federation would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>3</sup>

#### Scope of the Agreement

The product covered by the Suspension Agreement is natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U<sup>235</sup> and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U<sup>235</sup> or compounds of uranium enriched in U<sup>235</sup>; and any other forms of uranium within the same class or kind.

Uranium ore from Russia that is milled into U<sub>3</sub>O<sub>8</sub> and/or converted into UF<sub>6</sub> in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of this Suspension Agreement.

For purposes of this Suspension Agreement, uranium enriched in U<sup>235</sup> or compounds of uranium enriched in U<sup>235</sup> in Russia are covered by this Suspension Agreement, regardless of their subsequent modification or blending. Uranium enriched in U<sup>235</sup> in another country prior to direct and/or indirect importation into the United States is not considered uranium from Russia and is not subject to the terms of this Suspension Agreement.<sup>4</sup>

<sup>2</sup> See *Uranium From the Russian Federation; Final Results of the Expedited Fourth Sunset Review of the Suspension Agreement*, 82 FR 26776 (June 9, 2017).

<sup>3</sup> See *Uranium from Russia; Determination, Investigation No. 731-TA-539-C (Fourth Review)*, 82 FR 44842 (September 26, 2017); see also ITC Publication, *Uranium from Russia* (Investigation No. 731-TA-539-C (Fourth Review), USITC Publication 4727, September 2017).

<sup>4</sup> The second amendment of two amendments to the Suspension Agreement effective on October 3, 1996, in part included within the scope of the Suspension Agreement on Russian uranium which had been enriched in a third country prior to importation into the United States. According to the amendment, this modification remained in effect

<sup>1</sup> See *Initiation of Five-year (Sunset) Reviews*, 76 FR 38613 (July 1, 2011).

HEU is within the scope of the underlying investigation, and HEU is covered by this Suspension Agreement. For the purpose of this Suspension Agreement, HEU means uranium enriched to 20 percent or greater in the isotope uranium-235.

Imports of uranium ores and concentrates, natural uranium compounds, and all forms of enriched uranium are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds are currently classifiable under HTSUS subheadings: 2844.10.10 and 2844.10.50. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

#### Continuation of Suspension of Investigation

As a result of the determinations by the Department and the ITC that termination of the Agreement and the suspended investigation would be likely to lead to continuation or recurrence, respectively, of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the Agreement. The effective date of continuation of the Agreement will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to Section XII of the 2008 Amendment to the Agreement, the Department intends to terminate the Agreement, and the underlying antidumping investigation, on December 31, 2020.<sup>5</sup>

This five-year (sunset) review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: September 27, 2017.

**Carole Showers,**

*Executive Director, performing the non-exclusive duties of Deputy Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017-21211 Filed 9-29-17; 8:45 am]

**BILLING CODE 3510-DS-P**

until October 3, 1998. See *Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665, 56667 (November 4, 1996).

<sup>5</sup> See *Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation*, 73 FR 7705 (February 11, 2008).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### National Sea Grant Advisory Board; Public Meeting of the National Sea Grant Advisory Board's Fall 2017 Meeting

**AGENCY:** National Oceanic and Atmospheric Administration, Department of Commerce (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of public meeting of the National Sea Grant Advisory Board (NSGAB).

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the NSGAB. NSGAB members will discuss and provide advice on the National Sea Grant College Program (NSGCP) in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the NSGCP Web site at <http://seagrant.noaa.gov/WhoWeAre/Leadership/NationalSeaGrantAdvisoryBoard/UpcomingAdvisoryBoardMeetings.aspx>.

**DATES:** The announced meeting is scheduled for Monday, October 16 from 8:00 a.m. to 4:45 p.m. ET and Tuesday, October 17 from 8:00 a.m. to 12:00 p.m. ET.

**ADDRESSES:** The meeting will be held at the Embassy Suites by Hilton, 605 West Oglethorpe Avenue, Savannah, Georgia 31401.

**Status:** The meeting will be open to public participation with a 15-minute public comment period on Tuesday, October 17, 2017 at 11:30 a.m. ET. (Check agenda using link in the Summary section to confirm time prior to attending.)

The NSGAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by Elizabeth Rohring by Friday, October 13, 2017 to provide sufficient time for NSGAB review. Written comments received after the deadline will be distributed to the NSGAB, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-serve basis.

**Contact Information:** For any questions concerning the meeting, please contact Elizabeth Rohring,

National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11861, Silver Spring, Maryland 20910, 301-734-1082, or via email at [elizabeth.rohring@noaa.gov](mailto:elizabeth.rohring@noaa.gov).

**Special Accommodations:** These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Elizabeth Rohring by Friday, October 6, 2017. See Contact Information.

**SUPPLEMENTARY INFORMATION:** The NSGAB, which consists of a balanced representation from academia, industry, state government, and other relevant fields, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94-461, 33 U.S.C. 1128). The NSGAB advises the Secretary of Commerce and the Director of the NSGCP with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

Dated: September 22, 2017.

**David Holst,**

*Acting Chief Financial Officer/CAO, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 2017-21090 Filed 9-29-17; 8:45 am]

**BILLING CODE 3510-KA-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XF541**

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Pier Replacement Project in San Diego, CA

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Navy to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with the pier replacements project at Naval Base Point Loma.

**DATES:** This Authorization is effective from October 8, 2017, through October 7, 2018.

**FOR FURTHER INFORMATION CONTACT:**

Laura McCue, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm). In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:****Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

**National Environmental Policy Act (NEPA)**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

**Summary of Request**

On June 19, 2017, we received a request from the Navy for an IHA to take marine mammals incidental to pile installation and demolition associated with a pier replacement project in San Diego Bay at Naval Base Point Loma (NBPL) in San Diego, CA, including a separate monitoring plan. The Navy also submitted a draft monitoring report on June 13, 2017, pursuant to requirements of the previous IHA. These final application and monitoring plan were deemed adequate and complete on July 20, 2017. The pier replacement project is planned to occur over multiple years; this IHA would cover only the fifth year of work and would be valid for a period of one year from the date of issuance. Hereafter, use of the generic term “pile driving” may refer to both pile installation and removal unless otherwise noted. The Navy’s request is for take of nine species of marine mammals by Level B harassment. Neither the Navy nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate.

Monitoring reports are available online at [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm) and provide environmental information related to issuance of this IHA.

This IHA will cover one year of a larger project for which the Navy obtained prior IHAs and this request for take authorization is for the fifth year of the project, following the IHAs issued effective from October 8, 2016, through October 7, 2017 (81 FR 66628), from September 1, 2013, through August 31, 2014 (78 FR 44539), from October 8,

2014, through October 7, 2015 (79 FR 65378), and from October 8, 2015, through October 7, 2016 (80 FR 62032). The Navy complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHA. Monitoring reports are available online at [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm) and provide environmental information related to issuance of this IHA.

**Description of the Specified Activity****Overview**

NBPL provides berthing and support services for Navy submarines and other fleet assets. The existing fuel pier serves as a fuel depot for loading and unloading tankers and Navy underway replenishment vessels that refuel ships at sea (“oilers”), as well as transferring fuel to local replenishment vessels and other small craft operating in San Diego Bay, and is the only active Navy fueling facility in southern California. Portions of the pier are over one hundred years old, while the newer segment was constructed in 1942. The pier as a whole is significantly past its design service life and does not meet current construction standards.

The Navy plans to demolish and remove the existing pier and associated pipelines and appurtenances while simultaneously replacing it with a generally similar structure that meets relevant standards for seismic strength and is designed to better accommodate modern Navy ships. Demolition and construction are planned to occur in two phases to maintain the fueling capabilities of the existing pier while the new pier is being constructed. During the fifth year of construction (the specified activity considered under this IHA), the Navy anticipates construction at two locations: The fuel pier area and at the Naval Mine and Anti-Submarine Warfare Command (NMAWC), where the Navy’s Marine Mammal Program (MMP) was temporarily moved during fuel pier construction (see Figure 1–1 in the Navy’s application). A detailed description of the planned Project is provided in the **Federal Register** notice for the proposed IHA (82 FR 36360; August 4, 2017). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

**Comments and Responses**

A notice of NMFS’s proposal to issue an IHA to the Navy was published in the **Federal Register** on August 4, 2017 (82 FR 36360). That notice described, in

detail, the Navy's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission).

**Comment 1:** The Commission recommended that NMFS share the rounding criteria with the Commission such that the matter of when rounding should occur in the take calculation can be resolved in the near future.

**Response:** NMFS will share the rounding criteria with the Commission soon and looks forward to working with them in the future to resolve this issue.

### Description of Marine Mammals in the Area of the Specified Activity

Species with the expected potential to be present during all or a portion of the in-water work window include the California sea lion (*Zalophus californianus*), harbor seal (*Phoca vitulina richardii*), northern elephant seal (*Mirounga angustirostris*), gray whale (*Eschrichtius robustus*), bottlenose dolphin (*Tursiops truncatus truncatus*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Risso's dolphin (*Grampus griseus*), and either short-beaked or long-beaked common dolphins (*Delphinus* spp.). California sea lions are present year-round and are very common in the project area, while bottlenose dolphins and harbor seals are common and likely to be present year-round but with more variable occurrence in San Diego Bay. Gray whales may be observed in San Diego Bay sporadically during migration periods. The remaining species are known to occur in nearshore waters outside San Diego Bay, but are generally only rarely observed near or in the bay. However, recent observations indicate that these species may occur in the project area and therefore could potentially be subject to incidental harassment from the aforementioned activities.

There are four marine mammal species which are either resident or have known seasonal occurrence in the

vicinity of San Diego Bay, including the California sea lion, harbor seal, bottlenose dolphin, and gray whale (see Figures 3–1 through 3–4 and 4–1 in the Navy's application). In addition, common dolphins (see Figure 3–4 in the Navy's application), the Pacific white-sided dolphin, Risso's dolphin, and northern elephant seals are known to occur in deeper waters in the vicinity of San Diego Bay and/or have been observed within the bay during the course of this project's monitoring. Although the latter three species of cetacean would not generally be expected to occur within the project area, the potential for changes in occurrence patterns in conjunction with recent observations leads us to believe that authorization of incidental take is warranted. Common dolphins have been documented regularly at the Navy's nearby Silver Strand Training Complex, and were observed in the project area during previous years of project activity. The Pacific white-sided dolphin has been sighted along a previously used transect on the opposite side of the Point Loma peninsula (Merkel and Associates 2008) and there were several observations of Pacific white-sided dolphins during Year 2 monitoring. Risso's dolphin is fairly common in southern California coastal waters (e.g., Campbell *et al.*, 2010), and could occur in the bay. Northern elephant seals are included based on their continuing increase in numbers along the Pacific coast (Carretta *et al.*, 2016) and the likelihood that animals that reproduce on the islands offshore of Baja California and mainland Mexico—where the population is also increasing—could move through the project area during migration, as well as the observation of a juvenile seal near the fuel pier in April 2015.

Note that common dolphins could be either short-beaked (*Delphinus delphis delphis*) or long-beaked (*D. delphis bairdii*) subspecies. While it is likely that common dolphins observed in the project area would be long-beaked, as it is the most frequently stranded species in the area from San Diego Bay to the

U.S.-Mexico border (Danil and St. Leger 2011), the species distributions overlap and it is unlikely that observers would be able to differentiate them in the field. Therefore, we consider that any common dolphins observed—and any incidental take of common dolphins—could be either long- or short-beaked common dolphins.

In addition, other species that occur in the Southern California Bight may have the potential for isolated occurrence within San Diego Bay or just offshore. In particular, a short-finned pilot whale (*Globicephala macrorhynchus*) was observed off Ballast Point, and a Steller sea lion (*Eumetopias jubatus monteriensis*) was seen in the project area during Year 2. These species are not typically observed near the project area and, unlike the previously mentioned species, we do not believe it likely that they will occur in the future. Given the unlikelihood of their exposure to sound generated from the project, these species are not considered further.

Table 1 lists all marine mammal species with expected potential for occurrence in the vicinity of NBPL during the project timeframe and summarizes key information, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. A detailed description of the species likely to be affected by the Navy's project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (82 FR 36360; August 4, 2017); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' Web site ([www.nmfs.noaa.gov/pr/species/mammals/](http://www.nmfs.noaa.gov/pr/species/mammals/)) for generalized species accounts.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NBPL

| Species                                                                    | Stock                      | ESA/MMPA status; strategic (Y/N) <sup>1</sup> | Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup> | PBR <sup>3</sup> | Annual M/SI <sup>4</sup> | Relative occurrence in San Diego Bay; season of occurrence |
|----------------------------------------------------------------------------|----------------------------|-----------------------------------------------|------------------------------------------------------------------------------------|------------------|--------------------------|------------------------------------------------------------|
| <b>Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)</b> |                            |                                               |                                                                                    |                  |                          |                                                            |
| <b>Family Eschrichtiidae</b>                                               |                            |                                               |                                                                                    |                  |                          |                                                            |
| Gray whale .....                                                           | Eastern North Pacific .... | –; N                                          | 20,990 (0.05; 20,125; 2011).                                                       | 624              | 132                      | Occasional migratory visitor; winter.                      |

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NBPL—Continued

| Species                                                                 | Stock                         | ESA/MMPA status; strategic (Y/N) <sup>1</sup> | Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup> | PBR <sup>3</sup> | Annual M/SI <sup>4</sup> | Relative occurrence in San Diego Bay; season of occurrence |
|-------------------------------------------------------------------------|-------------------------------|-----------------------------------------------|------------------------------------------------------------------------------------|------------------|--------------------------|------------------------------------------------------------|
| <b>Superfamily Odontoceti (toothed whales, dolphins, and porpoises)</b> |                               |                                               |                                                                                    |                  |                          |                                                            |
| <b>Family Delphinidae</b>                                               |                               |                                               |                                                                                    |                  |                          |                                                            |
| Bottlenose dolphin .....                                                | California coastal .....      | –; N                                          | 453 (0.06; 346; 2011) ...                                                          | 2.7              | ≥2.0                     | Common; year-round.                                        |
| Short-beaked common dolphin.                                            | California/Oregon/Washington. | –; N                                          | 969,861 (0.17; 839,325; 2014).                                                     | 8,393            | ≥40                      | Occasional; year-round (but more common in warm season).   |
| Long-beaked common dolphin.                                             | California .....              | –; N                                          | 101,305 (0.49; 68,432; 2014).                                                      | 657              | ≥35.4                    | Occasional; year-round (but more common in warm season).   |
| Pacific white-sided dolphin.                                            | California/Oregon/Washington. | –; N                                          | 26,814 (0.28; 21,195; 2014).                                                       | 191              | 7.5                      | Uncommon; year-round.                                      |
| Risso's dolphin .....                                                   | California/Oregon/Washington. | –; N                                          | 6,336 (0.32; 4,817; 2014).                                                         | 46               | ≥3.7                     | Rare; year-round (but more common in cool season).         |
| <b>Order Carnivora—Superfamily Pinnipedia</b>                           |                               |                                               |                                                                                    |                  |                          |                                                            |
| <b>Family Otariidae (eared seals and sea lions)</b>                     |                               |                                               |                                                                                    |                  |                          |                                                            |
| California sea lion .....                                               | U.S. ....                     | –; N                                          | 296,750 (n/a; 153,337; 2011).                                                      | 9,200            | 389                      | Abundant; year-round.                                      |
| <b>Family Phocidae (earless seals)</b>                                  |                               |                                               |                                                                                    |                  |                          |                                                            |
| Harbor seal .....                                                       | California .....              | –; N                                          | 30,968 (n/a; 27,348; 2012).                                                        | 1,641            | 43                       | Common; year-round.                                        |
| Northern elephant seal ..                                               | California breeding .....     | –; N                                          | 179,000 (n/a; 81,368; 2010).                                                       | 4,882            | 8.8                      | Rare; year-round.                                          |

<sup>1</sup> Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (–) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

<sup>2</sup> CV is coefficient of variation; N<sub>min</sub> is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species (or similar species) life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

<sup>3</sup> Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

<sup>4</sup> These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value.

### Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

The effects of underwater noise from Navy's activities for the pier replacement project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (82 FR 36360; August 4, 2017) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please refer to the **Federal Register** notice (82 FR 36360; August 4, 2017) for that information.

### Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will

inform both NMFS' consideration of whether the number of takes is "small" and the negligible impact determination. Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for

individual marine mammals resulting from exposure to acoustic sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.*, shutdown, soft start, *etc.*—discussed in detail below in *Mitigation Measures* section), Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above

these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the take estimate.

#### Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed by varying degrees by other factors related to the source (*e.g.*, frequency, predictability, duty cycle), the environment (*e.g.*, bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and

can be difficult to predict (Southall *et al.*, 2007). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1  $\mu$ Pa (rms) for continuous (*e.g.*, vibratory pile-driving, drilling) and above 160 dB re 1  $\mu$ Pa (rms) for non-explosive impulsive (*e.g.*, impact pile driving) or intermittent (*e.g.*, scientific sonar) sources.

The Navy's planned activity includes the use of continuous (vibratory pile driving, demolition) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1  $\mu$ Pa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS's Technical Guidance

for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NOAA 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Navy's construction project includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: <http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm>.

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

| Hearing group                        | PTS onset acoustic thresholds *<br>(received level) |                             |
|--------------------------------------|-----------------------------------------------------|-----------------------------|
|                                      | Impulsive                                           | Non-impulsive               |
| Low-frequency cetaceans .....        | Cell 1: Lpk,flat: 219 dB; LE,LF,24h: 183 dB .....   | Cell 2: LE,LF,24h: 199 dB.  |
| Mid-frequency cetaceans .....        | Cell 3: Lpk,flat: 230 dB; LE,MF,24h: 185 dB .....   | Cell 4: LE,MF,24h: 198 dB.  |
| High-frequency cetaceans .....       | Cell 5: Lpk,flat: 202 dB; LE,HF,24h: 155 dB .....   | Cell 6: LE,HF,24h: 173 dB.  |
| Phocid Pinnipeds (underwaters) ..... | Cell 7: Lpk,flat: 218 dB; LE,PW,24h: 185 dB .....   | Cell 8: LE,PW,24h: 201 dB.  |
| Otariid Pinnipeds (underwater) ..... | Cell 9: Lpk,flat: 232 dB; LE,OW,24h: 203 dB .....   | Cell 10: LE,OW,24h: 219 dB. |

\* [NMFS 2016]

#### Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

The intensity of pile driving or sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. For the installation of 30-inch (in) steel piles and pile cutting activities, acoustic monitoring

during the first and second IHA periods (NAVFAC 2015) resulted in empirical data that are directly applicable to the fifth IHA period in terms of the activities and the location, depth, sizes and types of piles.

Table 3 identifies the sound source levels that are used in evaluating impact and vibratory pile driving and extraction in the current IHA application. Sound levels for the hydraulic pile cutter, diamond saw caisson cutting, and pile jetting were

measured during the fourth IHA period (NAVFAC SW 2017). No acoustic data are available from the vibratory driving of 16-in concrete piles, so the data for vibratory installation of 30-in steel piles from the second IHA period are used as a conservative proxy (NAVFAC SW 2015). Finally, SPLs were measured for the impact driving of 16-in poly-concrete piles during the third IHA monitoring period (NAVFAC SW 2016a), and are used in this application for the same activities.

TABLE 3—UNDERWATER SOUND PRESSURE LEVELS FROM SIMILAR IN SITU MONITORED CONSTRUCTION ACTIVITIES FROM PREVIOUS YEARS

| Project and location           | Pile size and type             | Method                       | Water depth | Measured sound pressure levels (rms) at 10 m<br>(dB re 1 $\mu$ Pa) |                  |
|--------------------------------|--------------------------------|------------------------------|-------------|--------------------------------------------------------------------|------------------|
|                                |                                |                              |             | mean <sup>1</sup>                                                  | max <sup>2</sup> |
| NBPL Fuel Pier, San Diego, CA. | 13 to 24-in concrete .....     | Hydraulic pile cutting ..... | 9 m (30 ft) | 145                                                                | 165.3            |
| NBPL Fuel Pier, San Diego, CA. | 66- and 84-in steel caisson .. | Diamond saw cutting .....    | 9 m (30 ft) | 149                                                                | 155.6            |

TABLE 3—UNDERWATER SOUND PRESSURE LEVELS FROM SIMILAR IN SITU MONITORED CONSTRUCTION ACTIVITIES FROM PREVIOUS YEARS—Continued

| Project and location           | Pile size and type        | Method          | Water depth | Measured sound pressure levels (rms) at 10 m (dB re 1 $\mu$ Pa) |                    |
|--------------------------------|---------------------------|-----------------|-------------|-----------------------------------------------------------------|--------------------|
|                                |                           |                 |             | mean <sup>1</sup>                                               | max <sup>2</sup>   |
| NBPL Fuel Pier, San Diego, CA. | 24-in concrete .....      | Jetting .....   | 9 m (30 ft) | 155                                                             | 159.9              |
| NBPL Fuel Pier, San Diego, CA. | 30-in Steel Pipe .....    | Vibratory ..... | 9 m (30 ft) | 162.5                                                           | <sup>3</sup> 162.5 |
| NBPL Fuel Pier, San Diego, CA. | 16-in Poly-Concrete ..... | Impact .....    | 9 m (30 ft) | 188.9                                                           | <sup>4</sup> 195   |

<sup>1</sup> Mean source levels used from data from previous monitoring reports (NAVFAC SW 2015, 2016a, 2017). Mean source levels were used to calculate Level B ZOIs.

<sup>2</sup> Maximum source levels used from data from previous monitoring reports (NAVFAC SW 2015, 2016a, 2017). Max source levels were used to calculate Level A ZOIs. Maximum source levels used were proposed by the Navy.

<sup>3</sup> Mean source levels for 30-in steel pipe piles were used as a proxy to calculate ZOIs for vibratory driving of 16-in concrete guide piles (NAVFAC SW 2015).

<sup>4</sup> The maximum source level is included for reference only. The distance to the Level B ZOI is based on *in situ* data collected for 16-in poly-concrete piles and was documented in NAVFAC SW (2016a).

Scarce data exists on airborne and underwater noise levels associated with vibratory hammer extraction. However, it can reasonably be assumed that vibratory extraction emits SPLs that are no higher than SPLs caused by vibratory hammering of the same materials, and results in lower SPLs than caused by impact hammering comparable piles. For this application, the same value (162.5 decibels (dB) re 1 micropascal ( $\mu$ Pa)) that was obtained for vibratory hammering of the 30-in steel piles at the Fuel Pier (NAVFAC SW 2015) is used for the vibratory hammering of 16-in round concrete piles at NMAWC. None of the peak sound pressure levels (SPLs) for the various sound sources reach the injury thresholds identified in the new NMFS (2016) Technical Guidance; therefore, injury from peak sound levels is not considered further.

Table 5 provides the calculated areas of Level A and Level B zones of influence (ZOIs) associated with the

impulsive and continuous sounds that are anticipated during the fifth-year IHA period. Table 4 provides the data that were used to calculate the distances to the Level A and B ZOIs presented in Table 5. It should be noted that the ZOI for Level A harassment would be closely monitored and subject to shutdowns if a marine mammal enters the area. The ZOI areas and maximum distances for the activities at the fuel pier and NMAWC are shown in Figures 6–1 and 6–2, respectively of the Navy's application. The figures reflect the conventional assumption that the natural or manmade shoreline acts as a barrier to underwater sound. It is generally accepted practice to model underwater sound propagation from pile driving as continuing in a straight line past a shoreline projection such as Ballast Point (Dahl 2012). Similarly, it is reasonable to assume that project sound would not propagate east of Zuniga Jetty (Dahl 2012).

All of the ZOIs for potential Level A acoustic harassment (Table 5) would be buffered and encompassed by a larger shutdown zone. For example, the ZOIs for potential Level A acoustic harassment to pinnipeds from impact pile driving (Table 5) would be contained within a 60 meters (m) (196 feet (ft)) shutdown zone. For impact pile driving at NMAWC, two methods identified in NMFS (2016) were evaluated to determine the most conservative distances to the Level A ZOIs using: (1) Root mean square (rms) SPL source levels; and (2) single strike equivalent SEL. The calculations showed that the first method was the most conservative and this method was subsequently used to determine the distances to the Level A ZOIs (Table 4). In all Level A ZOI calculations, the default values for the weighting factor adjustment and practical spreading for propagation loss were used (see Appendix A of the Navy's application).

TABLE 4—DATA USED TO CALCULATE DISTANCES TO LEVEL B ZOIs

| Activity                                   | Impact pile driving                 | Vibratory pile driving          | Pile jetting                    | Caisson cutting                     | Pile clipping                   |
|--------------------------------------------|-------------------------------------|---------------------------------|---------------------------------|-------------------------------------|---------------------------------|
| References for Source Level and Duration.  | Year 3 report #1 (NAVFAC SW 2016a). | Year 2 report (NAVFAC SW 2015). | Year 4 report (NAVFAC SW 2017). | Year 3 report #1 (NAVFAC SW 2016a). | Year 4 report (NAVFAC SW 2017). |
| Size & Type of Piles used for Source Data. | 16-in poly-concrete piles.          | 30-in steel piles ....          | 24x30-in concrete piles.        | 84-in caissons .....                | 24-in concrete piles.           |
| Source Level (rms SPL) .....               | 188.9 .....                         | 162.5 .....                     | 159.9 .....                     | 155.6 .....                         | 165.3.                          |
| Distance to Level B ZOI (m) .....          | 270 .....                           | 1,848 .....                     | 1,165 .....                     | 631 .....                           | 2,511.                          |

The Level B ZOIs and distances are based on the validated SPLs directly measured during the IHA monitoring (NAVFAC SW 2014–2017), as available. For example, the distance to the Level B ZOI for impact driving of 16-in poly-concrete piles was 270 m (886 ft) during

Year 3 monitoring (NAVFAC SW 2016a). In cases where monitoring data are not available to empirically measure the extent of the Level B ZOI (activities at NMAWC), “practical spreading loss” from the source at 10 m has been assumed ( $15 \log[\text{distance}/10]$ ) and used

to calculate the maximum extent of the ZOI based on the applicable threshold. Computed distances to the threshold for acoustic disturbance from non-impulsive sources are based on the distances at which the project sound source declines to ambient. Because the

mean ambient sound levels in San Diego Bay in the vicinity of the project range from approximately 128 to 130 dB rms (NAVFAC SW 2015), the 120 dB

acoustic threshold for the Level B ZOIs have been modified based on an approximate measured value between 128 and 129 dB. The distances for all

activities producing sound at NMAWC will be verified via hydrophone during project activities.

TABLE 5—CALCULATED MAXIMUM AREAS OF ZOIS AND DISTANCES TO RELEVANT THRESHOLDS

| Activity                                                           | Measured/calculated distances to thresholds (m) and areas of ZOIs (m <sup>2</sup> or km <sup>2</sup> ) |                         |                            |                         |                            |                            |                            |                       |
|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|-------------------------|----------------------------|-------------------------|----------------------------|----------------------------|----------------------------|-----------------------|
|                                                                    | Underwater                                                                                             |                         |                            |                         |                            |                            | Airborne                   |                       |
|                                                                    | Level A <sup>1 2 3</sup>                                                                               |                         |                            |                         | Level B <sup>4</sup>       |                            | Level B                    |                       |
|                                                                    | LF                                                                                                     | MF                      | PW                         | OW                      | 160 dB                     | 120 dB <sup>5</sup>        | 100 dB <sup>6</sup>        | 90 dB <sup>6</sup>    |
| Old Fuel Pier and Temporary Mooring Dolphin Demolition             |                                                                                                        |                         |                            |                         |                            |                            |                            |                       |
| 66-in and 84-in caissons (Diamond saw cutting).                    | 3.6 m                                                                                                  | 0.3 m                   | 2.2 m                      | 0.2m                    | N/A .....                  | 631 m                      | N/A                        |                       |
| Concrete piles (Pile clipping) ...                                 | 41 m <sup>2</sup> .....                                                                                | <1 m <sup>2</sup> ..... | 15 m <sup>2</sup> .....    | <1 m <sup>2</sup> ..... | .....                      | 0.7157 km <sup>2</sup> ... |                            |                       |
|                                                                    | 1.2 m                                                                                                  | 0.1 m                   | 0.7 m                      | 0.0 m                   |                            | 2,511 m                    |                            |                       |
|                                                                    | 4 m <sup>2</sup> .....                                                                                 | <1 m <sup>2</sup> ..... | <1 m <sup>2</sup> .....    | 0 m <sup>2</sup> .....  |                            | 4.4512 km <sup>2</sup>     |                            |                       |
| NMAWC Construction and Demolition                                  |                                                                                                        |                         |                            |                         |                            |                            |                            |                       |
| 16-in concrete piles (Vibratory extraction/driving) <sup>8</sup> . | 8.3 m                                                                                                  | 0.7 m                   | 5.1 m                      | 0.4 m                   | N/A .....                  | 1,848 m                    | 42 m                       | 149 m                 |
| 16-in concrete piles (Impact driving) <sup>9</sup> .               | 216 m <sup>2</sup> .....                                                                               | <1 m <sup>2</sup> ..... | 82 m <sup>2</sup> .....    | <1 m <sup>2</sup> ..... | .....                      | 2.4473 km <sup>2</sup> ... | 5,503 m <sup>2</sup> ..... | 69,646 m <sup>2</sup> |
|                                                                    | 63.4 m                                                                                                 | 2.3 m                   | 33.9 m                     | 2.5 m                   | 270 m                      | N/A.                       |                            |                       |
|                                                                    | 0.0126 km <sup>2</sup> ...                                                                             | 17 m <sup>2</sup> ..... | 3,610 m <sup>2</sup> ..... | 20 m <sup>2</sup> ..... | 0.1408 km <sup>2</sup> ... | .....                      |                            |                       |
| 16-in concrete piles (Jetting pile extraction).                    | 3.9 m                                                                                                  | 0.3 m                   | 2.4 m                      | 0.2 m                   | N/A .....                  | 1,165 m                    | N/A                        |                       |
|                                                                    | 47.8 m <sup>2</sup> .....                                                                              | <1 m <sup>2</sup> ..... | 18 m <sup>2</sup> .....    | <1 m <sup>2</sup> ..... | .....                      | 1.4268 km <sup>2</sup> ... |                            |                       |

<sup>1</sup> If measured value thresholds are less than 10 m (33 ft), a minimum monitoring distance of 10 m (33 ft) would be implemented.

<sup>2</sup> Based on measured mean source levels. The relevant data have been included in Appendix A of the Navy's application, which provides information from previous years' data collected as part of the Fuel Pier Project (NAVFAC SW 2015, 2016a, 2017).

<sup>3</sup> LF = Low-frequency cetaceans; MF = Mid-frequency cetaceans; PW = Phocid pinnipeds; OW = Otariid pinnipeds. The high-frequency cetacean hearing group (HF) is omitted, because no species in the hearing group occur in, or around, the Project area.

<sup>4</sup> Based on measured maximum source levels, unless otherwise stated. The relevant data have been included in Appendix A, which provides information from previous years' data collected as part of the Fuel Pier Project (NAVFAC SW 2015, 2016a, 2017).

<sup>5</sup> Average ambient sound levels in San Diego Bay are approximately 128 to 130 dB rms (NAVFAC SW 2015), and all 120 dB Level B ZOIs are based on an approximate value between 128 and 129, which represents ambient levels in the Bay.

<sup>6</sup> Airborne ZOIs based on conservative representative data (collected during 30-inch vibratory pile driving from IHA #4). Airborne noise levels did not exceed thresholds during IHA #4 monitoring of demolition activities.

<sup>7</sup> Plasma torch noise levels are not expected to exceed underwater or airborne regulatory thresholds.

<sup>8</sup> Based on conservative representative source levels of 162.5 dB rms (30-inch steel vibratory pile driving, NAVFAC SW 2015).

<sup>9</sup> This SL that corresponds with the measured pulse duration is 185 db. However, the Navy used a more conservative source level of 188.9, derived from a compilation of measured source levels over several years, which resulted in these larger Level A zones.

### Airborne Sound

Although sea lions are known to haul-out regularly on man-made objects in the vicinity of the project site (see Figure 4–1 of the Navy's application), and harbor seals are occasionally observed hauled out on rocks along the shoreline in the vicinity of the project site, none of these are within the ZOIs for airborne sound, and we believe that incidents of take resulting solely from airborne sound are unlikely. The zones for sea lions are within the minimum shutdown zone defined for underwater sound and, although the zones for harbor seals are larger, they have not been observed to haul out as readily on man-made structures in the immediate vicinity of the project site. There is a possibility that an animal could surface in-water, but with head out, within one of the defined zones and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimation of incidental take from underwater sound.

We generally recognize that pinnipeds occurring within an estimated airborne harassment zone, whether in the water

or hauled out, could be exposed to airborne sound that may result in behavioral harassment. However, any animal exposed to airborne sound above the behavioral harassment threshold is likely to also be exposed to underwater sound above relevant thresholds (which are typically in all cases larger zones than those associated with airborne sound). Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. While the likelihood of multiple incidents of exposure to sound above NMFS' thresholds for behavioral harassment to one individual could potentially result in increased behavioral disturbance, via either nature or intensity of disturbance reaction, if they occur within one day they are still only counted as one take and any differential impacts would be considered qualitatively. Therefore, we do not believe that authorization of additional incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here. Distances associated with airborne sound and shown in Table 4 are for reference only.

When NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as vibratory pile driving, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the

activity, it would not incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

TABLE 6—LEVEL A USER SPREADSHEET INPUT

|                                               | Impact pile driving                 | Vibratory pile driving          | Caisson cutting                     | Pile clipping                   | Pile jetting                    |
|-----------------------------------------------|-------------------------------------|---------------------------------|-------------------------------------|---------------------------------|---------------------------------|
| References for Source Level and Duration.     | Year 3 report #1 (NAVFAC SW 2016a). | Year 2 report (NAVFAC SW 2015). | Year 3 report #1 (NAVFAC SW 2016a). | Year 4 report (NAVFAC SW 2017). | Year 4 report (NAVFAC SW 2017). |
| Spreadsheet Tab Used .....                    | (E.1) Impact pile driving.          | (A.) Non-Impulse Stat-Cont.     | (A.) Non-Impulse Stat-Cont.         | (A.) Non-Impulse Stat-Cont.     | (A.) Non-Impulse Stat-Cont.     |
| Source Level (Single Strike/shot SEL).        | 188.9* .....                        | 162.5 .....                     | 149 .....                           | 145 .....                       | 155.                            |
| Weighting Factor Adjustment (kHz).            | 2 .....                             | 2.5 .....                       | 2.5 .....                           | 2.5 .....                       | 2.5.                            |
| (a) Activity Duration (h) within 24-h period. | 0.71 .....                          | 0.95 .....                      | 6 .....                             | 2.82 .....                      | 1.74.                           |
| Propagation (xLogR) .....                     | 15 .....                            | 15 .....                        | 15 .....                            | 15 .....                        | 15.                             |
| Distance of source level measurement (m).     | 10 .....                            | 10 .....                        | 10 .....                            | 10 .....                        | 10.                             |
| Pulse duration (sec) <sup>1</sup> .....       | 0.03 .....                          | n/a .....                       | n/a .....                           | n/a .....                       | n/a.                            |
| Number of strikes in 1 h .....                | 193 .....                           | n/a .....                       | n/a .....                           | n/a .....                       | n/a.                            |

<sup>1</sup> Pulse duration was measured in previous construction years and the average pulse duration was 0.03 at 10 m (NAVFAC SW 2016a).

\* This SL that corresponds with the measured pulse duration is 185 db. However, the Navy used a more conservative source level of 188.9, derived from a compilation of measured source levels over several years, which resulted in larger Level A zones.

#### Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

For all species, the best scientific information available was considered for use in the marine mammal take assessment calculations. Although various regional offshore surveys for marine mammals have been conducted, it is unlikely that these data would be representative of the species or numbers that may be encountered in San Diego Bay. However, the Navy has conducted a large number of ongoing site-specific marine mammal surveys during appropriate seasons (*e.g.*, Merkel and Associates 2008; Johnson 2010, 2011; Lerma 2012, 2014). Whereas analyses for the first-year IHA relied on surveys conducted from 2007–12, continuing surveys by the Navy have generally indicated increasing abundance of all species and the second-year IHA relied on 2012–14 survey data. In addition, the Navy has developed estimates of marine mammal densities in waters associated with training and testing areas (including Hawaii-Southern California) for the Navy Marine Species Density Database (NMSDD). A technical report (Hanser *et al.*, 2015) describes methodologies and available information used to derive these densities, which are based upon the best

available information, except where specific local abundance information is available and applicable to a specific action area. The document is publicly available online at: [nwtteis.com/DocumentsandReferences/NWTTDocuments/SupportingTechnicalDocuments.aspx](http://nwtteis.com/DocumentsandReferences/NWTTDocuments/SupportingTechnicalDocuments.aspx) (accessed July 13, 2017).

Year 2 project monitoring showed even greater abundance of certain species, and we consider all of these data in order to provide the most up-to-date estimates for marine mammal abundances during the period of this IHA. Although Years 3 and 4 project monitoring showed declines in marine mammal abundance in the vicinity of the project, we retain prior density estimates as a conservative measure for estimating exposure. Density information is shown in Table 8. These data are from dedicated line-transect surveys, required project marine mammal monitoring, opportunistic observations for more rarely observed species (see Figures 3–1 through 3–5 of the Navy's application), or the NMSDD.

#### Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

The following assumptions are made when estimating potential incidences of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;

- An individual can only be taken once during a 24-h period;

- The assumed ZOIs and days of activity are as shown in Table 4; and,

- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

In this case, the estimation of marine mammal takes uses the following calculation:

$$\text{Exposure estimate} = n * \text{ZOI} * \text{days of total activity}$$

Where:

$n$  = density estimate used for each species/season

ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated.

The ZOI impact area is estimated using the relevant distances in Table 4, assuming that sound radiates from a central point in the water column slightly offshore of the existing pier and taking into consideration the possible affected area due to topographical constraints of the action area (*i.e.*, radial distances to thresholds are not always reached).

TABLE 7—AREAS OF ACOUSTIC INFLUENCE AND DAYS OF ACTIVITY

| Activity                                             | Number of days* | ZOI (km <sup>2</sup> ) |
|------------------------------------------------------|-----------------|------------------------|
| 66-in and 84-in caissons (Diamond saw cutting) ..... | 50              | 0.7157                 |

TABLE 7—AREAS OF ACOUSTIC INFLUENCE AND DAYS OF ACTIVITY—Continued

| Activity                                                               | Number of days * | ZOI (km <sup>2</sup> ) |
|------------------------------------------------------------------------|------------------|------------------------|
| Concrete piles (Pile clipping) .....                                   | 100              | 4.4512                 |
| 16-in concrete piles (Vibratory extraction/driving) <sup>1</sup> ..... | 25               | 2.4473                 |
| 16-in concrete piles (Jetting pile extraction) .....                   | 15               | 1.4268                 |

<sup>1</sup> We assume that impact driving of 16-in concrete piles would always occur on the same day as vibratory driving of the same piles. Therefore, the impact driving ZOI (0.1408 km<sup>2</sup>) would always be subsumed by the vibratory driving ZOI.

\* There are a total of 196 days of construction, but 6 of those days include piles being cut off at the mudline with a plasma torch, which would not create a ZOI.

There are a number of reasons why estimates of potential incidents of take may be conservative, assuming that available density and estimated ZOI areas are accurate. We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number more realistically represents the number of incidents of take that may accrue to a smaller number of individuals. While pile driving can occur any day throughout the period of validity, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates likely overestimate the number of individuals taken. See Table 8 for total estimated incidents of take.

#### *California Sea Lion*

During the second IHA period, an average of 90.35 California sea lions were seen per day within the maximum ZOI for pile driving, an area of 5.6752 square kilometers (km<sup>2</sup>) extending 3,000 m from the Fuel Pier. This equates to a density of 15.9201/km<sup>2</sup>. This density is used to estimate numbers of takes within the different ZOIs. NMFS estimates 8,971 Level B takes for this species. The maximum extents of the potential acoustic Level A ZOIs for cumulative exposure from all of the activities are much less than 10 m from the source, and therefore the 60-m shutdown zone will reduce the chance for Level A take. As a result, no Level A take of California sea lions is anticipated or authorized.

#### *Harbor Seal*

Sightings of harbor seals averaged 2.83 individuals per day during the period of the second IHA (NAVFAC SW

2015), a density of 0.4987/km<sup>2</sup> within the maximum ZOI for pile driving. This density is used to estimate numbers of takes within the different ZOIs. NMFS estimates 281 Level B takes for this species. The maximum extent of the potential acoustic Level A ZOI for cumulative exposure from impact pile driving extends 34 m from the source; for all other activities, the Level A ZOIs are much less than 10 m from the source, therefore a 60-m shutdown zone will be in place to avoid Level A takes to harbor seals. Level A takes are not anticipated nor authorized.

#### *Northern Elephant Seal*

Only a single individual elephant seal was sighted during the second IHA period (NAVFAC SW 2015), but with increasing numbers (Carretta *et al.*, 2016), they are considered a reasonable possibility to occur more frequently during the fifth IHA period. The regional density estimate of 0.0760/km<sup>2</sup> (Navy 2017) is assumed for the project area. This density is used to estimate numbers of takes within the different ZOIs. NMFS estimates 43 Level B takes for this species. Potential takes would likely involve single individuals that are on the shoreline or structures at the identified location, or swimming in the vicinity, most likely near the mouth of the bay. The maximum extent of the potential acoustic Level A ZOI for cumulative exposure from impact pile driving extends 34 m from the source; for all other activities, the Level A ZOIs are much less than 10 m from the source, therefore a shutdown will be in place to avoid Level A takes to harbor seals. Level A takes are not anticipated nor authorized.

#### *Bottlenose Dolphin*

Coastal bottlenose dolphins can occur at any time of year in northern San Diego Bay. Numbers sighted have been highly variable but have increased in recent years (NAVFAC SW 2014, 2015). During the second IHA period, an average of 7.09 individuals were seen per day, a density of 1.2493/km<sup>2</sup>. This density is used to estimate numbers of takes within the different ZOIs. NMFS

estimates 704 Level B takes for this species. The maximum extents of the potential acoustic Level A ZOIs for cumulative exposure from all of the activities are much less than 10 m from the source, and therefore the minimum 10 m shutdown will reduce the chance for Level A take. As a result, no Level A take of bottlenose dolphins is anticipated nor authorized.

#### *Common Dolphin*

An average of 8.67 common dolphins was seen per day, a density of 1.5277/km<sup>2</sup> within the maximum ZOI, during the second IHA period (NAVFAC SW 2015). This density is considerably higher than the regional density estimate for long-beaked common dolphins—the species most likely to occur (Navy 2017), but is reasonable for the project area given the group sizes observed for these species. Barlow (2010) reported average group sizes in southern California of 122 for short-beaked common dolphins and 195 for long-beaked common dolphins, and during the second IHA period, groups of approximately 170 and 300 individuals entered the project area on different occasions (NAVFAC SW 2015). Considering the possibility for one or more large groups of common dolphins to enter San Diego Bay during in-water activities and the fact that the Level B ZOIs will extend completely across the bay during pile driving, the density estimate is considered appropriate. A density of 1.5277/km<sup>2</sup> is used to estimate numbers of takes within the different ZOIs. NMFS estimates 861 Level B takes for this species. The maximum extents of the potential acoustic Level A ZOIs for cumulative exposure from all of the activities are much less than 10 m from the source, and therefore the shutdown will reduce the chance for Level A take. As a result, no Level A take of common dolphins is anticipated nor authorized.

#### *Pacific White-Sided Dolphin*

Pacific white-sided dolphins are more commonly seen offshore, but were documented in the project area on several occasions during the second IHA

period. An average of 0.28 individuals per day was seen during the second IHA period (NAVFAC SW 2015), a density of 0.0493/km<sup>2</sup> within the maximum ZOI. This density is used to estimate numbers of takes within the different ZOIs. NMFS estimates 28 Level B takes for this species. The maximum extents of the potential acoustic Level A ZOIs for cumulative exposure from all of the activities are much less than 10 m from the source, and therefore the shutdown will reduce the chance for Level A take. As a result, no Level A take of Pacific white-sided dolphins is anticipated nor authorized.

Risso's Dolphin

While there have been no sightings of Risso's dolphin within the project area, the species is considered a reasonable possibility for the fifth IHA period given recent El Niño conditions (Shane 1995) and its abundance in Southern California coastal waters (Jefferson *et*

*al.*, 2014). The upper limit of the regional density estimate, 0.2029/km<sup>2</sup> (Navy 2017), is used to estimate numbers of takes within the different ZOIs. NMFS estimates 114 Level B takes for this species. The maximum extents of the potential acoustic Level A ZOIs for cumulative exposure from all of the activities are much less than 10 m from the source, and therefore the shutdown will reduce the chance for Level A take. As a result, no Level A take of Risso's dolphins is anticipated nor authorized.

Gray Whale

Gray whale occurrence within northern San Diego Bay is sporadic and would likely consist of one to a few individuals that venture close to, or enter the bay for a brief period, and then continue on their migration. A density estimate based on the rare sightings of gray whales near the mouth of the bay during the second IHA period (NAVFAC SW 2015), would be less than 0.01/km<sup>2</sup>,

which is slightly less than the regional density estimate of 0.0179/km<sup>2</sup> in southern California waters during winter-spring (Navy 2017). The regional density estimate is applied here as a reasonable estimate given the possibility of animals moving closer to shore and entering the mouth of the bay during the fifth IHA period. This density is used to estimate numbers of takes within the different ZOIs. NMFS estimates 10 Level B takes for this species. The maximum extent of the potential acoustic Level A ZOI for cumulative exposure from impact pile driving extends 63 m from the source; for all other activities, the Level A ZOIs are much less than 10 m from the source. Gray whales are not expected to occur that close to the source; however, the Navy will implement a minimum of 10 m (100 m for impact driving) shutdown will be in place to avoid Level A takes to gray whales. Level A takes are not anticipated nor authorized.

TABLE 8—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

| Species                           | Density | Diamond saw cutting of 66-inch and 84-inch caissons | Pile clipping concrete piles | Vibratory extraction/driving of 16-inch concrete piles | Jetting pile extraction of 16 in concrete piles | Total Level B takes * | Total authorized takes (% of total stock) |
|-----------------------------------|---------|-----------------------------------------------------|------------------------------|--------------------------------------------------------|-------------------------------------------------|-----------------------|-------------------------------------------|
| California sea lion .....         | 15.9201 | 570                                                 | 7086                         | 974                                                    | 341                                             | 8,971                 | 3.023                                     |
| Harbor seal .....                 | 0.4987  | 18                                                  | 222                          | 31                                                     | 11                                              | 281                   | 0.907                                     |
| Northern elephant seal .....      | 0.076   | 3                                                   | 34                           | 5                                                      | 2                                               | 43                    | 0.024                                     |
| Bottlenose dolphin .....          | 1.2493  | 45                                                  | 556                          | 76                                                     | 27                                              | 704                   | <sup>2</sup> 155                          |
| Common dolphin .....              | 1.5277  | 55                                                  | 680                          | 93                                                     | 33                                              | 861                   | <sup>3</sup> 0.088; <sup>4</sup> 0.85     |
| Pacific white-sided dolphin ..... | 0.0493  | 2                                                   | 22                           | 3                                                      | 1                                               | 28                    | 0.104                                     |
| Risso's dolphin .....             | 0.2027  | 7                                                   | 90                           | 12                                                     | 4                                               | 114                   | 1.799                                     |
| Gray whale .....                  | 0.0179  | 1                                                   | 8                            | 1                                                      | 0                                               | 10                    | 0.048                                     |

\* Due to rounding of takes to the nearest whole number of animals, (which occurs at the very end, not per activity), totals may not always equal the sum of the takes from individual activities.

<sup>1</sup> We assume that impact driving of steel piles would occur on the same day as vibratory driving of the same piles and that the zone for vibratory driving would always subsume the zone for impact driving. Therefore, separate estimates are not provided for impact driving of steel piles.

<sup>2</sup> The numbers of authorized take for bottlenose dolphins are higher relative to the total stock abundance estimate and would not represent small numbers if a significant portion of the take was for a new individual. However, these numbers represent the estimated incidents of take, not the number of individuals taken. That is, it is likely that a relatively small subset of California coastal bottlenose dolphins would be incidentally harassed by project activities.

<sup>3</sup> SB = short-beaked common dolphin.

<sup>4</sup> LB = long-beaked common dolphin.

Mitigation Measures

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and

feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is

expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned). and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity,

personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The mitigation strategies described below largely follow those required and successfully implemented under the first four IHAs associated with this project. For this IHA, data from acoustic monitoring conducted during the first four years of work was used to estimate zones of influence (ZOIs; see *Estimated Take by Incidental Harassment*); these values were used to develop mitigation measures for pile driving activities at NBPL. The ZOIs effectively represent the mitigation zone that would be established around each pile to minimize Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition, the Navy has defined buffers to the estimated Level A harassment zones to further reduce the potential for Level A harassment. In addition to the measures described later in this section, the Navy would conduct briefings between construction supervisors and crews,

marine mammal monitoring team, acoustic monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

#### *Monitoring and Shutdown for Pile Driving*

The following measures would apply to the Navy's mitigation through shutdown and disturbance zones:

**Shutdown Zone**—For all pile driving and removal activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the calculated Level A zones (refer to table). The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals (serious injury or death are unlikely outcomes even in the absence of mitigation measures). Estimated radial

distances to the relevant thresholds are shown in Table 4. For certain activities, the shutdown zone would not exist because source levels indicate that the radial distance to the threshold would be less than 10 m. However, a minimum shutdown zone of 10 m will be established during all pile driving and removal activities, regardless of the estimated zone. In addition the Navy plans to effect a buffered shutdown zone that is intended to significantly reduce the potential for Level A harassment given that, in particular, California sea lions are quite abundant in the project area and bottlenose dolphins may surface unpredictably and move erratically in an area with a large amount of construction equipment. These buffers are approximately double the distance to the Level A ZOI. These zones are also shown in Table 9. These precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to establish a precautionary minimum zone with regard to acoustic effects.

**TABLE 9—SHUTDOWN ZONES FOR LEVEL A ZOIs AND MONITORING ZONES FOR LEVEL B ZONES**

| Activity                                                         | Monitored distances to thresholds<br>(meters [feet]) |                 |                 |                 |         |                     |
|------------------------------------------------------------------|------------------------------------------------------|-----------------|-----------------|-----------------|---------|---------------------|
|                                                                  | Underwater                                           |                 |                 |                 |         |                     |
|                                                                  | Level A<br>(shutdown)                                |                 |                 |                 | Level B |                     |
|                                                                  | LF <sup>1</sup>                                      | MF <sup>1</sup> | PW <sup>1</sup> | OW <sup>1</sup> | 160 dB  | 120 dB <sup>2</sup> |
| Old Fuel Pier and Temporary Mooring Dolphin Demolition           |                                                      |                 |                 |                 |         |                     |
| 66-inch and 84-inch caissons (Diamond saw cutting) .....         | 10                                                   |                 |                 |                 | N/A     | 631                 |
| Concrete piles (Pile clipping) .....                             | 10                                                   |                 |                 |                 | N/A     | 2,511               |
| NMAWC Construction and Demolition                                |                                                      |                 |                 |                 |         |                     |
| 16-inch concrete piles (Vibratory extrac-<br>tion/driving) ..... | <sup>4</sup> 20                                      |                 | 10              |                 | N/A     | 1,848               |
| 16-inch concrete piles (Impact driving) ....                     | <sup>5</sup> 100                                     |                 | <sup>6</sup> 60 |                 | 270     | N/A                 |
| 16-inch concrete piles (Jetting pile ex-<br>traction) .....      | 10                                                   |                 |                 |                 | N/A     | 1,165               |
| 16-inch concrete piles (Pile dead-pull) ....                     | 10                                                   |                 |                 |                 | N/A     |                     |

<sup>1</sup> LF = Low-frequency cetaceans; MF = Mid-frequency cetaceans; PW = Phocid pinnipeds; OW = Otariid pinnipeds. The high-frequency cetacean hearing group (HF) is omitted, because no species in the hearing group occur in, or around, Project area.

<sup>2</sup> Mean ambient sound levels in San Diego Bay are approximately 128 dB rms (NAVFAC SW 2015), and all 120 dB Level B ZOIs are based on the ambient value. The distances for all activities producing sound at NMAWC will be verified via hydrophone during project activities.

<sup>3</sup> Airborne noise levels did not exceed regulatory thresholds during previous IHAs. No airborne monitoring will take place for diamond saw cutting of caissons, plasma torch cutting of temporary mooring dolphin 30-inch steel piles, jetting or dead-pull extraction of concrete piles.

<sup>4</sup> Includes buffer of calculated Level A threshold out to 20 m (65.6 ft).

<sup>5</sup> Includes buffer of calculated Level A threshold out to 100 m (328 ft).

<sup>6</sup> Includes buffer of calculated Level A threshold out to 60 m (328 ft).

**Disturbance Zone**—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for

impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for

mitigation purposes (*i.e.*, shutdown zone monitoring) by establishing monitoring protocols for areas adjacent

to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see *Monitoring and Reporting Measures*). Nominal radial distances for disturbance zones are shown in Table 9.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. If acoustic monitoring is being conducted for that pile, a received SPL may be estimated, or the received level may be estimated on the basis of past or subsequent acoustic monitoring. It may then be determined whether the animal was exposed to sound levels constituting incidental harassment in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. Therefore, although the predicted distances to behavioral harassment thresholds are useful for estimating incidental harassment for purposes of authorizing levels of incidental take, actual take may be determined in part through the use of empirical data.

Acoustic measurements will continue during the fifth year of project activity and zones would be adjusted as indicated by empirical data. Please see the Navy's Acoustic and Marine Species Monitoring Plan (Monitoring Plan; available at [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm)) for full details.

**Monitoring Protocols**—Monitoring would be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile

driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Monitoring Plan for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable (as defined in the Monitoring Plan) to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

(a) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(b) Ability to conduct field observations and collect data according to assigned protocols

(c) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(d) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(e) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

(f) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared

clear, and pile driving started, when the entire shutdown zone is visible (*i.e.*, when not obscured by dark, rain, fog, *etc.*). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of small cetaceans or pinnipeds and 30 minutes for gray whales. Monitoring will be conducted throughout the time required to drive a pile and for thirty minutes following the conclusion of pile driving.

#### *Sound Attenuation Devices*

The use of bubble curtains to reduce underwater sound from impact pile driving was considered prior to the start of the project but was determined to not be practicable. Use of a bubble curtain in a channel with substantial current may not be effective, as unconfined bubbles are likely to be swept away and confined curtain systems may be difficult to deploy effectively in high currents. Data gathered during monitoring of construction on the San Francisco-Oakland Bay Bridge indicated that no reduction in the overall linear sound level resulted from use of a bubble curtain in deep water with relatively strong current (Illingworth & Rodkin 2001). During project monitoring for pile driving associated with the Richmond-San Rafael Bridge, also in San Francisco Bay, it was observed that performance in moderate current was significantly reduced (Oestman *et al.*, 2009). Lucke *et al.* (2011) also note that the effectiveness of most currently used curtain designs may be compromised in stronger currents and greater water depths. We believe that conditions (relatively deep water and strong tidal currents of up to 3 knots (kn)) at the project site would disperse the bubbles and compromise the effectiveness of sound attenuation.

#### *Timing Restrictions*

In-order to avoid impacts to least tern populations when they are most likely to be foraging and nesting, in-water work will be concentrated from October 1–April 1 or, depending on circumstances, to April 30. However, this limitation is in accordance with agreements between the Navy and FWS, and is not a requirement of this IHA. All in-water construction activities would occur only from 45 minutes after sunrise to 45 minutes before sunset.

### Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in “bouncing” of the hammer as it strikes the pile, resulting in multiple “strikes.” The project will utilize soft start techniques for impact pile driving. We require an initial set of three strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day’s impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer; the requirement to implement soft start for impact driving is independent of whether vibratory driving has occurred within the prior thirty minutes.

Based on our evaluation of the Navy’s planned measures, as well as any other potential measures that may be relevant to the specified activity, we have determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### Monitoring and Reporting Measures

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) Affected species (e.g., life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (e.g., age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat (e.g. marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Please see the Monitoring Plan (available at [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm)) for full details of the requirements for monitoring and reporting. Notional monitoring locations (for biological and acoustic monitoring) are shown in Figures 3–1 and 3–2 of the Plan. The purpose of this Plan is to provide protocols for acoustic and marine mammal monitoring implemented during pile driving and removal activities. We have determined this monitoring plan, which is summarized here and which largely follows the monitoring strategies required and successfully implemented under the previous IHAs, to be sufficient to meet the MMPA’s monitoring and reporting requirements. The previous monitoring plan was modified to integrate adaptive changes to the monitoring methodologies as well as updates to the scheduled construction activities. Monitoring objectives are as follows:

- Monitor in-water construction activities, including the implementation of in-situ acoustic monitoring efforts to continue to measure SPLs from in-water construction and demolition activities not previously monitored or validated

during the previous IHAs. This would include collection of acoustic data for activities and pile types for which sufficient data has not previously been collected, including for diamond saw cutting of caissons and pile clipping of the concrete piles during fuel pier demolition. The Navy also plans to collect acoustic data for vibratory extraction and/or driving, impact driving, and jetting pile extraction of the concrete piles at NMAWC.

- Monitor marine mammal occurrence and behavior during in-water construction activities to minimize marine mammal impacts and effectively document marine mammals occurring within ZOI boundaries.

Collection of ambient underwater sound measurements in the absence of project activities has been concluded, as a rigorous baseline dataset for the project area has been developed.

### Acoustic Measurements

The primary purpose of acoustic monitoring is to empirically verify modeled injury and behavioral disturbance zones (defined at radial distances to NMFS-specified thresholds; see *Estimated Take by Incidental Harassment*). For non-pulsed sound, distances will continue to be evaluated for attenuation to the point at which sound becomes indistinguishable from background levels. Empirical acoustic monitoring data will be used to document transmission loss values determined from past measurements and to examine site-specific differences in SPL and affected ZOIs on an as needed basis.

Should monitoring results indicate it is appropriate to do so, marine mammal mitigation zones may be revised as necessary to encompass actual ZOIs. Acoustic monitoring will be conducted as specified in the approved Monitoring Plan. Please see Table 2–2 of the Plan for a list of equipment to be used during acoustic monitoring. Monitoring locations will be determined based on results of previous acoustic monitoring effort and the best professional judgment of acoustic technicians.

For activities such as demolition of the old fuel pier and temporary mooring dolphin, the Navy will continue to collect in situ acoustic data to validate source levels and ZOIs. Environmental data would be collected including but not limited to: Wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions and other factors that could contribute to influencing the airborne and underwater sound levels (e.g., aircraft, boats). Full details of acoustic monitoring

requirements may be found in section 4.2 of the Navy's Monitoring Plan.

#### *Visual Marine Mammal Observations*

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving as described under *Mitigation Measures* and in the Monitoring Plan, with observers located at the best practicable vantage points. Notional monitoring locations are shown in Figures 3–3 and 3–4 of the Navy's Plan. Please see that plan, available at [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm), for full details of the required marine mammal monitoring. Section 3.2 of the Plan and Section 13 of the Navy's application offer more detail regarding monitoring protocols. Based on our requirements, the Navy would implement the following procedures for pile driving:

- Marine Mammal Observers (MMO)s would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

One MMO will be placed in the most effective position near the active construction/demolition platform in order to observe the respective shutdown zones for vibratory and impact pile driving or for applicable demolition activities. Monitoring would be primarily dedicated to observing the shutdown zone; however, MMOs would record all marine mammal sightings beyond these distances provided it did not interfere with their effectiveness at carrying out the shutdown procedures. Additional land, pier, or vessel-based MMOs will be positioned to monitor the

shutdown zones and the buffer zones, as notionally indicated in Figures 3–3 and 3–4 of the Navy's application.

For all pile driving and applicable demolition activities, a minimum of one observer shall monitor the shutdown zones. However, any action requiring the impact or vibratory hammer will necessitate two MMOs. For impact and vibratory pile driving of 16-in concrete piles, two observers shall be positioned for optimal monitoring of the surrounding waters.

The MMOs will record all visible marine mammal sightings. Confirmed takes will be registered once the sightings data has been overlaid with the isopleths identified in Table 4 and visualized in Figures 6–2, 6–3, and 6–4 of the Navy's application, or based on refined acoustic data, if amendments to the ZOIs are needed. Acousticians on duty may be noting SPLs in real-time, but, to avoid biasing the observations, will not communicate that information directly to the MMOs. These platforms may move closer to, or farther from, the source depending on whether received SPLs are less than or greater than the regulatory threshold values. All MMOs will be in radio communication with each other so that the MMOs will know when to anticipate incoming marine mammal species and when they are tracking the same animals observed elsewhere.

If any species for which take is not authorized is observed by a MMO during applicable construction or demolition activities, all construction will be stopped immediately. Pile driving will commence if the animal has not been seen inside the Level B ZOI for at least one hour of observation. If the animal is resighted again, pile driving will be stopped and a boat-based MMO (if available) will follow the animal until it has left the Level B ZOI. If the animal is resighted again, pile driving will be stopped and a boat-based MMO (if available) will follow the animal until it has left the Level B ZOI.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

#### *Data Collection*

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns,

including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (e.g., percent cover, visibility);
- Water conditions (e.g., sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity, and if possible, the correlation to measured SPLs;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (e.g., shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

In addition, photographs would be taken of any gray whales observed. These photographs would be submitted to NMFS' West Coast Regional Office for comparison with photo-identification catalogs to determine whether the whale is a member of the WNP population.

#### *Reporting*

A draft report would be submitted to NMFS within 45 calendar days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent IHA for this project, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions. A final report would be prepared and submitted within 30 days following resolution of comments on the draft report. Required contents of the monitoring reports are described in more detail in the Navy's Acoustic and Marine Species Monitoring Plan.

### *Monitoring Results From Previously Authorized Activities*

The Navy complied with the mitigation and monitoring required under the previous authorizations for this project. Acoustic and marine mammal monitoring was implemented as required, with marine mammal monitoring occurring before, during, and after each pile driving event. During the course of Year 4 activities, the Navy did not exceed the take levels authorized under the IHA (please see the Navy's monitoring report for more details and below for further discussion).

The general objectives of the monitoring plan were similar to those described above for the Year 5 monitoring plan. For acoustic monitoring, the primary goal was to continue to collect in situ data towards validation of the acoustic ZOIs defined based on previous data collection efforts and using the transmission loss modeling effort conducted prior to the start of the project, and to continue collection of data on background noise conditions in San Diego Bay.

*Acoustic Monitoring Results*—For a full description of acoustic monitoring methodology, please see section 2.3 of the Navy's monitoring report, including Figure 2–3 for representative monitoring locations. Results from Years 1–4 are displayed in Table 10. Please see our notices of proposed IHAs for the Years 2, 3, and 4 IHAs (79 FR 53026, September 5, 2014; 80 FR 53115, September 2, 2015; and 81 FR 66628, September 28, 2016) or the Navy's Year 1 and 2 monitoring reports for more detailed description of monitoring accomplished during the first two years of the project.

For acoustic monitoring associated with impact pile driving, continuous hydroacoustic monitoring systems were positioned at source (10 m from the pile) and opportunistically at predicted 160-dB Level B ZOIs. The far-field data collections were conducted at multiple locations during impact driving of 16-in concrete-filled poly piles and 24 x 30-in concrete fender piles, *i.e.*, approximately 20 to 550 m from source. Hydrophones were deployed from the dock, barge, or moored vessel at half the water depth. The SPLs for driving of 30-in steel pipe piles were measured intermittently and archived (but not reported) because associated SPLs for the size, type, and location of the piles were previously validated. Source SPLs were recorded and analyzed for a minimum of five piles for each of the concrete pile types. Additional measurements were archived.

SPLs of pile driving and demolition activities conducted during Year 2 fell within expected levels but varied spatially relative to the existing fuel pier structure and maximum source levels for individual piles (Table 10). For both vibratory and impact pile driving methods, results from the IPP (Year 1) and 2014/2015 production pile driving (Year 2) showed that transmission loss for piles driven in shallow water inside of the existing fuel pier was greater than piles driven in deep water outside of the existing pier. Differences in depth, sediment type, and existing in-water pier/wharf structures likely accounted for variations in transmission loss and measured differences in SPLs recorded at the shutdown and far-field locations for shallow versus deep piles of the same type and size. SPLs documented during vibratory and impact pile driving of shallow and deep steel pipe piles of the same size displayed notable differences in SPLs at shutdown range and to a lesser extent at source.

Measurements of impact driving of concrete piles conducted during Year 3 produced greater than expected SPLs at source. Differences in the subsurface conditions may account for the discrepancy, as a hardened layer is found at approximately 20–40 m below the mudline. SPLs documented during driving of 16-in piles generally displayed relatively low sound source levels during initial driving then appreciable increases observed once the piles interacted with this layer. Measurements from driving of the square concrete piles showed greatest sound source levels during initial impact pile driving, which then decreased once the piles transitioned through the hardened layer. While source SPLs were observed to be greater than expected for both pile types, attenuation was also greater. Despite greater than expected source levels, the measured isopleth distances were similar to modeled predictions. Far-field impact pile driving results varied substantially between piles and locations for the various pile sizes, types, and locations. Both pile types were driven adjacent to the new fuel pier and source SPLs were subject to a wide variety of boundary conditions from recently driven piles and associated pier infrastructure. Further detail and discussion is provided in the Navy's report.

During Year 4, measurements were conducted for pile clipping, caisson cutting, pile jetting, and airborne vibratory and impact driving. The average SPLs for pile clipping at source ranged from 138.0 to 144.6 dB rms, with maximum SPLs at source ranging from

156.1 to 165.3 dB rms (see Table 6–3 of the Navy's monitoring report). Measurements were conducted on eight piles and took one to three minutes to cut.

Caisson demolition was conducted on 18 84-in concrete-filled caissons, with an average duration of approximately 6 hours per caisson. Underwater acoustic data was collected for seven caissons using the vibratory setting. For some of the recordings, there were two caissons being cut simultaneously and the acousticians captured the SPLs for comparison between a single cutter versus two cutters. If two cutters were running, the distance measured was from the closest caisson to the location. Average SPLs at source for a single cutter were 136.1 and 141.4 dB rms. Maximum SPLs at source for a single cutter were 140.9 and 146.5 dB rms. Average SPLs at source for two cutters running simultaneously were 146.5 and 149.0 dB rms. Maximum SPLs at source for two cutters running simultaneously were 149.0 and 155.6 dB rms. On average, there was a 10 dB difference between a single cutter and two at source. Far-field recordings for a single cutter were collected at far-field locations ranging from 20 to 430 m (66 to 1,411 ft), with documented maximum SPL values from 136.6 to 145.5 dB rms. Far-field recordings for two cutters were also collected at far-field locations ranging from 85 to 810 m (279 to 2,657 ft), with documented maximum SPL values from 133.2 to 146.8 dB rms.

SPLs of pile installation activities for the 24 x 30 concrete piles had not been previously documented. The only jetting data collected during the Project was at NMAWC during the removal of 12-inch and 16-inch concrete piles. A total of sixteen 24 x 30 concrete non-structural fender piles were driven using two techniques: (1) Method 1 (M1) utilized a custom-made spud jet with four nozzles welded to the tip that used a high-pressure water system (900 gallons per minute with a maximum pounds per square inch (psi) of 300), to make the initial break through the bay point formation sediment layer; and (2) Method 2 (M2) used the 24 x 30 pile, outfitted with two pipes inside the full length of the pile, which then used a high-pressure water system (maximum psi of 300) to remove sediment and place the pile. Pile jetting averaged 24.5 minutes per pile and acoustic recordings were collected for the entire duration. Collection of underwater acoustic data were completed on six piles using the vibratory setting. For M1, the average sound pressure levels (SPL) at source ranged from 152.6 dB rms to 155.1 dB rms, and maximum SPLs at

source ranged from 156.5 dB rms to 159.9 dB rms. For M2, the average SPL at source ranged from 133.0 dB to 149.8 dB and maximum SPLs at source ranged from 137.1 dB to 153.2 dB rms. A vessel based drift method was used to obtain far-field recordings during M1 and M2 jetting techniques; the vessel was initially positioned at the closest feasible distance to source, and then allowed to drift on the natural tidal current until near ambient sound pressure levels were obtained. The SPLs

at far-field for the first drift during jetting M1 reached near ambient at 165 m (541 ft) from pile with an SPL of 128.0 dB. The SPLs at far-field for the first drift during pile jetting M2 reached near ambient at 80 m (262 ft) from pile with an SPL of 127.6 dB. Recordings during the vessel drifts showed that jetting reached near ambient levels for both methods between 80 m (262 ft) and 165 m (541 ft; M1 and M2, respectively).

Airborne sound levels were recorded during vibratory pile driving on

fourteen 30-inch steel piles. The maximum recorded airborne dB rms values at source was 106.3 dB re 20  $\mu$ Pa, and average values ranged from 96.0 to 102.7 dB re 20  $\mu$ Pa. Airborne sound levels were recorded during impact pile driving on sixteen 30-inch steel piles. The maximum recorded airborne dB values at source was 118.5 dB re 20  $\mu$ Pa, and average values ranged from 105.8 to 112.5 dB re 20  $\mu$ Pa. Further detail and discussion is provided in the Navy's report.

TABLE 10—ACOUSTIC MONITORING RESULTS FOR YEAR 4

| Location                 | Activity                        | Pile type                       | Number of piles measured | Average underwater SPL at 10 m (dB rms) | Average airborne SPL (LZF <sub>max</sub> ) <sup>1</sup> |
|--------------------------|---------------------------------|---------------------------------|--------------------------|-----------------------------------------|---------------------------------------------------------|
| Fuel Pier (Year 4) ..... | Pile Clipping .....             | 24-in square concrete pile .... | 4                        | 141                                     | .....                                                   |
|                          | Caisson Demolition (1 cutter)   | 84-in caisson .....             | 10                       | 136                                     | .....                                                   |
|                          | Caisson Demolition (2 cutters). | 84-in caisson .....             | 8                        | 138                                     | .....                                                   |
|                          | Vibratory .....                 | 30-in steel (at source) .....   | 7                        | .....                                   | 100                                                     |
|                          | Vibratory .....                 | 30-in steel (far field) .....   | 7                        | .....                                   | 86                                                      |
|                          | Impact .....                    | 30-in steel (at source) .....   | 9                        | .....                                   | 110                                                     |
|                          | Impact .....                    | 30-in steel (far field) .....   | 7                        | .....                                   | 88                                                      |
| NMAWC (Year 4) .....     | Pile Jetting .....              | 24 x 30 .....                   | 10                       | 147                                     | .....                                                   |

<sup>1</sup> Measured from Source (15.2 m) and Far-field Distances for 30-inch Steel Piles.

**Marine Mammal Monitoring Results—** Marine mammal monitoring was conducted as required under the IHA and as described in the Year 4 monitoring plan and in our **Federal Register** notice of proposed authorization associated with the Year 4 IHA. For a full description of monitoring methodology, please see section 2 of the Navy's monitoring report, including Figure 2–1, 2–2, and 2–7 for representative monitoring locations and Figures 2–2 through 2–5 for monitoring zones. Monitoring protocols were managed adaptively during the course of the fourth-year IHA. Multiple shutdowns were implemented due to marine mammals being observed within buffered shutdown zones, but no animals were observed within actual predicted Level A harassment zones while pile driving was occurring (one harbor seal was seen within the Level A ZOI after a shutdown of construction had been implemented).

Monitoring results are presented in Table 11. The Navy recorded all observations of marine mammals, including pre- and post-construction monitoring efforts. Animals observed

during these periods or that were determined to be outside relevant ZOIs were not considered to represent incidents of take. Please see Figures 3–11, 3–12, 3–22, 3–23, 3–30, and 3–31 of the Navy's Monitoring Report for locations of observations and incidents of take relative to the project sites. Take authorization for the second-year authorization was informed by an assumption that 115 days of in-water construction would occur, whereas only fifty total days actually occurred. However, the actual observed rates per day were in all cases lower than what was assumed. Therefore, we expect that the Navy would not have exceeded the take allowances even if the full 115 days had been reached.

There were considerably fewer individuals and sightings during the Year 3 IHA when compared to the same months during the Year 2 IHA, and only three species were observed. This may be due to environmental fluctuations as part of the on-going El Niño event. Water temperatures during Year 3 were warmer than during the same months during Year 2. Although the temperatures were still higher than the

average water temperatures for the region prior to the current El Niño event, it shows that the event may have been dissipating. In addition, California sea lion strandings decreased. No evidently significant behavioral changes were reported.

Similar to Year 3, there were considerably fewer individuals and sightings during the Year 4 IHA when compared to the same months during the Year 2 IHA, and only four species were observed. This may be due to environmental fluctuations as part of the on-going El Niño event. Water temperatures during Year 4 were slightly warmer than during the same months during Year 2. Although the temperatures were still higher than the average water temperatures for the region prior to the current El Niño event, it shows that the event may have been dissipating. In addition, California sea lion strandings decreased, but may be returning to numbers more commonly observed. No evidently significant behavioral changes were reported.

TABLE 11—MARINE MAMMAL MONITORING RESULTS FOR YEAR 4

| Species                   | Total sightings | Total individuals | Observed incidents of Level B take | Extrapolated incidents of Level B take <sup>1</sup> | Total estimated Level B take |
|---------------------------|-----------------|-------------------|------------------------------------|-----------------------------------------------------|------------------------------|
| California sea lion ..... | 717             | 2,037             | 156                                | 1,835                                               | 1,991                        |

TABLE 11—MARINE MAMMAL MONITORING RESULTS FOR YEAR 4—Continued

| Species                  | Total sightings | Total individuals | Observed incidents of Level B take | Extrapolated incidents of Level B take <sup>1</sup> | Total estimated Level B take |
|--------------------------|-----------------|-------------------|------------------------------------|-----------------------------------------------------|------------------------------|
| Harbor seal .....        | 87              | 102               | 21                                 | 57                                                  | 78                           |
| Bottlenose dolphin ..... | 18              | 45                | 4                                  | 144                                                 | 148                          |
| Gray whale .....         | 1               | 1                 | 0                                  | 13                                                  | 13                           |

<sup>1</sup> Assumed density and unmonitored area of assumed Level B ZOI used with actual pile driving time to generate assumed take for unmonitored areas.

### Negligible Impact Analysis and Determination

NMFS has defined negligible impact in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Construction and demolition activities associated with the pier replacement project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving or removal is happening.

No injury, serious injury, or mortality is anticipated given the nature of the

activity and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. When impact driving is necessary, required measures (implementation of buffered shutdown zones) significantly reduce any possibility of injury. Given sufficient “notice” through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious. The likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for San Diego Bay (approaching 100 percent detection rate, as described by trained biologists conducting site-specific surveys) further enables the implementation of shutdowns to avoid injury, serious injury, or mortality.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from past years of this project and other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff 2006; HDR 2012; Lerma 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. In response to vibratory driving, pinnipeds (which may become somewhat habituated to human activity in industrial or urban waterways) have been observed to orient towards and sometimes move towards the sound. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in San Francisco Bay and in the Puget Sound

region, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No injury is anticipated or authorized;
- The anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;
- The absence of any significant habitat within the project area, including rookeries, significant haul-outs, or known areas or features of special significance for foraging or reproduction; and
- The presumed efficacy of the mitigation measures in reducing the effects of the specified activity to the level of least practicable impact.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all

affected marine mammal species or stocks.

### Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The number of incidents of take planned for authorization for these stocks, with the exception of the coastal bottlenose dolphin (see below), would be considered small relative to the relevant stocks or populations (see Table 8) even if each estimated taking occurred to a new individual. This is an extremely unlikely scenario as, for pinnipeds occurring at the NBPL waterfront, there will almost certainly be some overlap in individuals present day-to-day and in general, there is likely to be some overlap in individuals present day-to-day for animals in estuarine/inland waters.

The numbers of authorized take for bottlenose dolphins are higher relative to the total stock abundance estimate and would not represent small numbers if a significant portion of the take was for a new individual. However, these numbers represent the estimated incidents of take, not the number of individuals taken. That is, it is likely that a relatively small subset of California coastal bottlenose dolphins would be incidentally harassed by project activities. California coastal bottlenose dolphins range from San Francisco Bay to San Diego (and south into Mexico) and the specified activity would be stationary within an enclosed water body that is not recognized as an area of any special significance for coastal bottlenose dolphins (and is therefore not an area of dolphin aggregation, as evident in Navy observational records). We therefore believe that the estimated numbers of takes, were they to occur, likely represent repeated exposures of a much smaller number of bottlenose dolphins and that, based on the limited region of exposure in comparison with the known distribution of the coastal bottlenose dolphin, these estimated incidents of

take represent small numbers of bottlenose dolphins.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

### Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

### Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the ESA Interagency Cooperation Division, whenever we propose to authorize take for endangered or threatened species.

The Navy initiated informal consultation under section 7 of the ESA with NMFS Southwest Regional Office (now West Coast Regional Office) on March 5, 2013. NMFS concluded on May 16, 2013, that the planned action may affect, but is not likely to adversely affect, WNP gray whales. The Navy has not requested authorization of the incidental take of WNP gray whales and we are not authorizing it, and there are no other ESA-listed marine mammals found in the action area. Therefore, no consultation under the ESA is required.

Dated: September 27, 2017.

**Donna S. Wieting,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2017-21044 Filed 9-29-17; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XF697

### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Submarine Base New London Pier Construction

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

**ACTION:** Notice; receipt of application for letter of authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorization to take, by harassment, of marine mammals incidental to conducting pier construction at the Navy Submarine Base New London in Groton, Connecticut, beginning October 2018 and ending March 2022. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

**DATES:** Comments and information must be received no later than November 1, 2017.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is [ITP.guan@noaa.gov](mailto:ITP.guan@noaa.gov).

*Instructions:* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size. All comments received are a part of the public record and will generally be posted to [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm) without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

## Availability

An electronic copy of the Navy's application may be obtained online at: [www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm).

## Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

The use of sound sources such as those described in the application (*e.g.*, pile driving) may result in the take of marine mammals through disruption of behavioral patterns or may cause auditory injury of marine mammals. Therefore, incidental take authorization under the MMPA is warranted.

## Summary of Request

On March 22, 2017, NMFS received an application from the Navy requesting authorization to take a small number of harbor and gray seals, by Level A and Level B harassment, incidental to noise exposure resulting from conducting pier

construction activities at the Navy Submarine Base New London in Groton, Connecticut, from October 2018 to March 2022. On August 31, 2017, NMFS deemed the application adequate and complete.

## Description of the Specified Activity

The proposed Submarine Base New London pier construction includes construction of the new Pier 32 and the demolishing of the existing Pier 32 and Pier 10. Structural support piles for Pier 32 would consist of approximately 120 concrete-filled steel pipe piles measuring 36 inches in diameter. The piles would be driven between 40 feet (ft) below the mudline near the shore and 150 ft below the mudline at the end of the pier. Fender piles would also be installed and would consist of approximately 194 fiberglass-reinforced plastic piles measuring 16 inches in diameter. Demolition of existing Pier 32 would include the removal by vibratory driver-extractor (hammer) of approximately 60 steel piles from the temporary work trestle, 120 concrete-encased steel H-piles, and 70 steel H-piles. Fifty-six wood piles would be pulled with a sling. Demolition of Pier 10 would include the removal by vibratory hammer of 24 concrete-encased, steel H-piles and 166 cast-in-place, reinforced concrete piles. Eight-four steel fender piles and 41 wood piles would be pulled with a sling. A total of 440 piles would be removed by vibratory hammer for both piers and the work trestle.

The in-water construction and demolition activities are anticipated to begin in October 2018 and take approximately 35 non-consecutive months to complete. However, the rule will cover a five-year period to encompass additional time should delays occur.

A suite of proposed mitigation and monitoring measures for marine mammals that could potentially be taken during in-water construction activities includes: (1) Establishing and monitoring Level A and Level B zones with protected species observers (PSOs), (2) establishing a 10-m shutdown and implementing shutdown measures with an animal is detected to approach the shutdown zone, and (3) limiting pile driving and pile removal activities during daylight hours only.

## Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see ADDRESSES). NMFS will consider all information, suggestions, and comments related to the Navy's request and NMFS'

potential development and implementation of regulations governing the incidental taking of marine mammals by the Navy's Submarine Base New London pier construction.

Dated: September 27, 2017.

**Donna S. Wieting,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2017-21072 Filed 9-29-17; 8:45 am]

**BILLING CODE 3510-22-P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the Procurement List.

**SUMMARY:** This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and a service from the Procurement List previously furnished by such agencies.

**DATES:** *Date added to and deleted from the Procurement List:* October 29, 2017.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Amy B. Jensen, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

### SUPPLEMENTARY INFORMATION:

#### Additions

On 6/30/2017 (82 FR 29852), 8/18/2017 (82 FR 39413-39414), and 8/25/2017 (82 FR 40569-40570), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following products and services are added to the Procurement List:

**Products****NSN(s)—Product Name(s):**

- 9930-00-NIB-0105—Kit, Post Mortem Bag, Basic, Straight Zipper, 36" x 90"
- 9930-00-NIB-0106—Kit, Post Mortem Bag, Basic, Curved Zipper, 36" x 90"
- 9930-00-NIB-0107—Kit, Post Mortem Bag, Heavy Duty, 36" x 90"
- 9930-00-NIB-0108—Kit, Post Mortem Bag, Heavy Duty, XL, 72" x 90"
- 9930-00-NIB-0109—Kit, Disaster Bag with ID Tags, 34" x 96"

**Mandatory Source(s) of Supply:** BOSMA Enterprises, Indianapolis, IN

**Mandatory for:**

**Contracting Activity:** Defense Logistics Agency Troop Support

**Distribution:** B-List

**NSN(s)—Product Name(s):**

- 7045-01-515-5371—Disk, Media, Recordable, Branded Attributes, Rewriteable, DVD-RW, 4X, Jewel Case, 5 Pack Spindle
- 7045-01-515-5372—Disk, Media, Recordable, Branded Attributes, DVD-R, 16X, 25 Pack Spindle
- 7045-01-515-5373—Disk, Media, Recordable, Branded Attributes, Rewriteable, DVD+RW, 4X, 25 Pack Spindle
- 7045-01-515-5374—Disk, Media, Recordable, Branded Attributes, DVD+R, 16X, 25 Pack Spindle
- 7045-01-515-5375—Disk, Media, Recordable, Branded Attributes, CD-R, 52X, 100 Pack Spindle

**Mandatory Source(s) of Supply:** North Central Sight Services, Inc., Williamsport, PA

**Mandatory for:**

**Contracting Activity:** General Services Administration, New York, NY

**Distribution:** A-List**Service**

**Service Type:** Sourcing, Warehousing, Assembly and Kitting Service

**Mandatory for:** Army National Guard Recruiting and Retention Command, Houston Barracks, Nashville, TN

**Mandatory Source(s) of Supply:** Industries for the Blind, Inc., West Allis, WI

**Contracting Activity:** DEPT OF THE ARMY, W7N1 USPFO ACTIVITY TN ARNG

**Service Type:** Custodial Service

**Mandatory for:** U.S. Geological Survey, Wetland and Aquatic Research Center, 700 Cajundome Boulevard, Lafayette, LA

**Mandatory Source(s) of Supply:** Louisiana Industries for the Disabled, Inc., Baton Rouge, LA

**Contracting Activity:** Dept of the Interior, U.S. Geological Survey

**Deletions**

On 8/18/2017 (82 FR 39413–39414), and 8/25/2017 (82 FR 40569–40570), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service deleted from the Procurement List.

**End of Certification**

Accordingly, the following products and service are deleted from the Procurement List:

**Products****NSN(s)—Product Name(s):**

- 8415-00-NSH-0489—Drawers and Undershirt (Collarless), Chem. Protect.
- 8415-00-NSH-0490—Drawers and Undershirt (Collarless), Chem. Protect.

**Mandatory Source(s) of Supply:** Peckham

Vocational Industries, Inc., Lansing, MI  
**Contracting Activity:** Defense Logistics

**Agency Troop Support****NSN(s)—Product Name(s):**

- 8920-01-E60-7859—Pancake and Waffle Mix, Buttermilk; 50 lb bag
- 8920-01-E60-7861—Pancake Mix, Regular
- 8920-01-E60-7862—Pancake and Waffle Mix, Regular; 25 lb bag
- 8920-01-E60-7863—Pancake and Waffle Mix, Regular; 50 lb bag

**Mandatory Source(s) of Supply:** Transylvania Vocational Services, Inc., Brevard, NC

**Contracting Activity:** Defense Logistics Agency Troop Support

**NSN(s)—Product Name(s):**

- 6530-00-783-7205—Litter, Folding, Rigid Pole, Decontaminable

**Mandatory Source(s) of Supply:** Arizona Industries for the Blind, Phoenix, AZ

**Contracting Activity:** Defense Logistics Agency Troop Support

**NSN(s)—Product Name(s):**

- 6920-01-NSH-9020—Target, Silhouette
- 6920-01-NSH-9021—M-16 w/Frame
- 6920-01-NSH-9022—M-16 w/o Frame

**Mandatory Source(s) of Supply:** Employment Source, Inc., Fayetteville, NC

**Contracting Activity:** W6QM MICC FDO FT BRAGG

**NSN(s)—Product Name(s):**

- 7510-01-431-6527—Foam Stamp Pad, Size #2, 3¼" x 6¼", Blue

**Mandatory Source(s) of Supply:** Cattaraugus County Chapter, NYSARC, Olean, NY

**Contracting Activity:** General Services Administration, New York, NY

**NSN(s)—Product Name(s):**

- 8410-01-443-9499—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 26XXLx35 12
- 8410-01-443-9425—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 26XLx34
- 8410-01-443-9411—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 24XXLx35½
- 8410-01-443-9394—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 22XXLx35½
- 8410-01-443-9389—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 22XLx34
- 8410-01-443-9384—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 20XXLx35½
- 8410-01-443-9380—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 20XLx34
- 8410-01-443-9122—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 18XXLx35½
- 8410-01-443-9117—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 16XLx34
- 8410-01-443-9110—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 16XXLx35½
- 8410-01-443-9088—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 16XLx34
- 8410-01-443-9084—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 14XXLx35½
- 8410-01-443-9029—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 14XLx34
- 8410-01-443-9027—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 12XXLx35½
- 8410-01-443-9022—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 12XLx34

8410-01-443-9016—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 10XXLx35½

8410-01-443-8989—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, 10XLx34

8410-00-0-sht503—Shirt, Tuck-in, Army, Women's, Long Sleeved, Green, LS

8410-01-415-8427—Shirt, Dress, Army, Women's, Long Sleeved, Green, 20RX31

8410-01-415-8425—Shirt, Dress, Army, Women's, Long Sleeved, Green, 8RX31

8410-01-415-7027—Shirt, Dress, Army, Women's, Long Sleeved, Green, 16Rx31

8410-01-415-7023—Shirt, Dress, Army, Women's, Long Sleeved, Green, 41x32½

8410-01-415-2914—Shirt, Dress, Army, Women's, Long Sleeved, Green, 16Lx32½

8410-01-415-2913—Shirt, Dress, Army, Women's, Long Sleeved, Green, 24Rx31

8410-01-415-2912—Shirt, Dress, Army, Women's, Long Sleeved, Green, 16Px29½

8410-01-415-2910—Shirt, Dress, Army, Women's, Long Sleeved, Green, 20Px29½

8410-01-415-2908—Shirt, Dress, Army, Women's, Long Sleeved, Green, 26Rx31

8410-01-415-2907—Shirt, Dress, Army, Women's, Long Sleeved, Green, 22Rx31

8410-01-415-2905—Shirt, Dress, Army, Women's, Long Sleeved, Green, 20Lx32½

8410-01-415-1594—Shirt, Dress, Army, Women's, Long Sleeved, Green, 6Lx32½

8410-01-415-1592—Shirt, Dress, Army, Women's, Long Sleeved, Green, 14Rx31

8410-01-415-1589—Shirt, Dress, Army, Women's, Long Sleeved, Green, 6Rx31

8410-01-415-1586—Shirt, Dress, Army, Women's, Long Sleeved, Green, 8Lx32½

8410-01-415-1585—Shirt, Dress, Army, Women's, Long Sleeved, Green, 18Px29½

8410-01-415-1584—Shirt, Dress, Army, Women's, Long Sleeved, Green, 16Rx31

8410-01-415-1583—Shirt, Dress, Army, Women's, Long Sleeved, Green, 18Lx32½

8410-01-415-1582—Shirt, Dress, Army, Women's, Long Sleeved, Green, 18R31

8410-01-415-1581—Shirt, Dress, Army, Women's, Long Sleeved, Green, 12Lx32½

8410-01-415-1580—Shirt, Dress, Army, Women's, Long Sleeved, Green, 12Lx32½

8410-01-415-1579—Shirt, Dress, Army, Women's, Long Sleeved, Green, 14Lx32½

8410-01-415-1578—Shirt, Dress, Army, Women's, Long Sleeved, Green, 12Px29½

8410-01-415-1577—Shirt, Dress, Army, Women's, Long Sleeved, Green, 4Rx31

8410-01-415-1576—Shirt, Dress, Army, Women's, Long Sleeved, Green, 10Rx31

8410-01-415-1575—Shirt, Dress, Army, Women's, Long Sleeved, Green, 10Px29½

8410-01-415-1574—Shirt, Dress, Army, Women's, Long Sleeved, Green, 8Px29½

8410-01-415-1573—Shirt, Dress, Army, Women's, Long Sleeved, Green, 10Longx32½

8410-01-415-1572—Shirt, Dress, Army, Women's, Long Sleeved, Green, 6Px29½

8410-01-415-1571—Shirt, Dress, Army, Women's, Long Sleeved, Green, 4Px29½

*Mandatory Source(s) of Supply:* Middle Georgia Diversified Industries, Inc., Dublin, GA

*Contracting Activity:* Defense Logistics Agency Troop Support

#### Service

*Service Type:* Custodial Service

*Mandatory for:* Marine Corps Reserve Center, West Trenton, NJ

*Mandatory Source(s) of Supply:* Occupational Training Center of Burlington County, Burlington, NJ

*Contracting Activity:* Dept of the Navy, Navy Facilities Engineering Command

**Amy B. Jensen,**

*Director, Business Operations.*

[FR Doc. 2017-20993 Filed 9-29-17; 8:45 am]

**BILLING CODE 6353-01-P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Public Availability of Consumer Product Safety Commission FY 2016 Service Contract Inventory

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Consumer Product Safety Commission (CPSC) with the Consolidated Appropriations Act, 2010 (Consolidated Appropriations Act), is announcing the availability of CPSC's service contract inventory for fiscal year (FY) 2016. This inventory provides information on service contract actions exceeding \$25,000 that CPSC made in FY 2016.

#### FOR FURTHER INFORMATION CONTACT:

Eddie Ahmad, Procurement Analyst, Division of Procurement Services, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814. Telephone: 301-504-7884; email: [aahmad@cpsc.gov](mailto:aahmad@cpsc.gov).

#### SUPPLEMENTARY INFORMATION:

On December 16, 2009, the Consolidated Appropriations Act became law. Section 743(a) of the Consolidated Appropriations Act, (Pub. L. 111-117, 123 Stat. 3034, 3216), titled, "Service Contract Inventory Requirement," requires agencies to submit to the Office of Management and Budget (OMB) an annual inventory of service contracts awarded or extended through the exercise of an option on or after April 1, 2010, and describes the contents of the inventory. The contents of the inventory must include:

(A) A description of the services purchased by the executive agency and the role the services played in achieving agency objectives, regardless of whether

such a purchase was made through a contract or task order;

(B) The organizational component of the executive agency administering the contract, and the organizational component of the agency whose requirements are being met through contractor performance of the service;

(C) The total dollar amount obligated for services under the contract and the funding source for the contract;

(D) The total dollar amount invoiced for services under the contract;

(E) The contract type and date of award;

(F) The name of the contractor and place of performance;

(G) The number and work location of contractor and subcontractor employees, expressed as full-time equivalents for direct labor, compensated under the contract;

(H) Whether the contract is a personal services contract; and

(I) Whether the contract was awarded on a noncompetitive basis, regardless of date of award.

Section 743(a)(3)(A) through (I) of the Consolidated Appropriations Act. Section 743(c) of the Consolidated Appropriations Act requires agencies to "publish in the **Federal Register** a notice that the inventory is available to the public."

Consequently, through this notice, we are announcing that the CPSC's service contract inventory for FY 2016 is available to the public. The inventory provides information on service contract actions of more than \$25,000 that CPSC made in FY 2016. The information is organized by function to show how contracted resources are distributed throughout the CPSC. OMB posted a consolidated government-wide Service Contract Inventory for FY 2016 at <https://www.acquisition.gov/service-contract-inventory>. You can access CPSC's inventory by limiting the "Contracting Agency Name" field on this spreadsheet to "Consumer Product Safety Commission."

Additionally, CPSC's Division of Procurement Services has posted the FY 2015 inventory analysis, along with other related materials required by OMB, on CPSC's homepage at the following link: <http://www.cpsc.gov/About-CPSC/Agency-Reports/Service-Contract-Inventory/>. The FY 2015 inventory analysis was developed in accordance with guidance issued on

October 17, 2016 by OMB, Office of Procurement Policy.

**Alberta E. Mills,**

*Acting Secretary, Consumer Product Safety Commission.*

[FR Doc. 2017-21029 Filed 9-29-17; 8:45 am]

BILLING CODE 6355-01-P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for AmeriCorps VISTA Concept Paper, Application and Budget Instructions, Project Progress Report and Progress Report Supplement (OMB Control Number 3045-0038)

**AGENCY:** Corporation for National and Community Service (CNCS).

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, CNCS is proposing to renew an information collection.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 1, 2017.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service; Attention Craig Kinnear, 250 E Street SW., Washington, DC, 20525.

(2) By hand delivery or by courier to the CNCS mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through [www.regulations.gov](http://www.regulations.gov).

Individuals who use a telecommunications device for the deaf (TTY-TDD) may call 1-800-833-3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

Comments submitted in response to this notice may be made available to the public through [regulations.gov](http://regulations.gov). For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public

docket and made available on the Internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public notwithstanding the inclusion of the routine notice.

#### FOR FURTHER INFORMATION CONTACT:

Craig Kinnear, 202-606-6708, or by email at [ckinnear@cns.gov](mailto:ckinnear@cns.gov).

#### SUPPLEMENTARY INFORMATION:

*Title of Collection:* AmeriCorps VISTA Concept Paper, Application and Budget Instructions, Project Progress Report and Progress Report Supplement.

*OMB Control Number:* 3045-0038.

*Type of Review:* Renewal.

*Respondents/Affected Public:*

Organizations and State, Local or Tribal Governments.

*Total Estimated Number of Annual Respondents:* 815.

*Total Estimated Annual Frequency:* One time for the Concept Paper; annually for the Application with Budget Instructions and VISTA Progress Report Supplement; four times a year for the Progress Report in a project's first year and twice a year thereafter.

*Total Estimated Average Response Time Per Response:* 15 hours (Application), 15 hours (VPR), 8 hours (VPRS).

*Total Estimated Number of Annual Burden Hours:* 12,225 hours (Application), 12,225 (VPR), 6,520 (VPRS).

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

*Abstract:* The Concept Paper, Application, and Budget Instructions are designed to assure that potential AmeriCorps VISTA sponsors provide the information needed to determine their suitability for approval. The VISTA Progress Report and Progress Report Supplement allow sponsors to report on their programmatic and performance progress. No changes have been made to the instructions or forms. CNCS also seeks to continue using the currently approved information collection until the information collection is renewed by OMB. The currently approved information collection is due to expire on November 30, 2017.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on [regulations.gov](http://regulations.gov).

Dated: September 26, 2017.

**Eileen Conoboy,**

*Acting Director, AmeriCorps VISTA.*

[FR Doc. 2017-20984 Filed 9-29-17; 8:45 am]

BILLING CODE 6050-28-P

## DEPARTMENT OF DEFENSE

### Department of Navy

#### Notice of Intent To Grant an Exclusive License; Radco Industries, Inc.

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of intent to grant license.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to Radco Industries, Inc., 700 Kingsland Drive, Batavia, IL 60510, a revocable, nonassignable, exclusive license to practice the Government-Owned invention described in U.S. Patent number 8,865,636 entitled "Paint Stripping Compositions" inventors Han et al.

**ADDRESSES:** Written objections are to be filed with the Naval Air Warfare Center Aircraft Division, Technology Transfer Office, Attention Michelle Miedzinski, Code 5.0H, 22347 Cedar Point Road, Building 2185, Box 62, Room 2160,

Patuxent River, Maryland 20670. File an electronic copy of objection with [michelle.miedzinski@navy.mil](mailto:michelle.miedzinski@navy.mil).

**DATES:** Anyone wishing to object to the grant of this license has fifteen (15) days from the publication date of this notice to file written objections along with supporting evidence, if any.

**FOR FURTHER INFORMATION CONTACT:**

Michelle Miedzinski, 301-342-1133, Naval Air Warfare Center Aircraft Division, 22347 Cedar Point Road, Building 2185, Box 62, Room 2160, Patuxent River, Maryland 20670, [michelle.miedzinski@navy.mil](mailto:michelle.miedzinski@navy.mil).

**Authority:** 35 U.S.C. 207, 37 CFR part 404.

Dated: September 26, 2017.

**A.M. Nichols,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2017-21107 Filed 9-29-17; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF DEFENSE

### Department of Navy

#### Notice of Cancellation of Meeting of Marine Corps University Board of Visitors

**AGENCY:** Marine Corps University, DOD.

**ACTION:** Notice.

**SUMMARY:** This notice cancels the public meeting of the Marine Corps University Board of Visitors, due to lack of quorum.

**DATES:** The cancelled meeting was scheduled to take place Thursday, September 14, 2017, from 9:00 a.m. to 4:30 p.m. and Friday, September 15, 2017, from 8:00 a.m. to 2:30 p.m. Eastern Time Zone.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kimberly Florich, Director of Faculty Development and Outreach, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134; by telephone at 703-432-4682; email: [Kimberly.florich@usmcu.edu](mailto:Kimberly.florich@usmcu.edu).

Dated: September 26, 2017.

**A.M. Nichols,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2017-21110 Filed 9-29-17; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2017-ICCD-0060]

#### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Talent Search (TS) Annual Performance Report

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before November 1, 2017.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2017-ICCD-0060. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216-34, Washington, DC 20202-4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Craig Pooler, 202-453-6195.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of

Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

**Title of Collection:** Talent Search (TS) Annual Performance Report.

**OMB Control Number:** 1840-0826.

**Type of Review:** A revision of an existing information collection.

**Respondents/Affected Public:** State, Local, and Tribal Governments; Private Sector.

**Total Estimated Number of Annual Responses:** 478.

**Total Estimated Number of Annual Burden Hours:** 8,604.

**Abstract:** Talent Search grantees must submit the report annually. The report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collection is also aggregated to provide information on project participants and program outcomes.

Dated: September 27, 2017.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2017-21027 Filed 9-29-17; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2017-ICCD-0107]

#### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual Protection and Advocacy of Individual Rights (PAIR) Program Assurances

**AGENCY:** Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is

proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before November 1, 2017.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2017–ICCD–0107. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216–44, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Samuel Pierre, 202–245–6488.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

**Title of Collection:** Annual Protection and Advocacy of Individual Rights (PAIR) Program Assurances.

**OMB Control Number:** 1820–0625.

**Type of Review:** An extension of an existing information collection.

**Respondents/Affected Public:** Private Sector.

**Total Estimated Number of Annual Responses:** 57.

**Total Estimated Number of Annual Burden Hours:** 9.

**Abstract:** Section 509 of the Rehabilitation Act of 1973, as amended (act), and its implementing Federal Regulations at 34 CFR part 381, require the Protection and Advocacy of Individual Rights (PAIR) grantees to submit an application to the Rehabilitation Services Administration (RSA) Commissioner in order to receive assistance under Section 509 of the act. The act requires that the application contain Assurances to which the grantee must comply. Section 509(f) of the act specifies the Assurances. There are 57 PAIR grantees. All 57 grantees are required to be part of the protection and advocacy system in each State established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 6041 *et seq.*).

Dated: September 27, 2017.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2017–21143 Filed 9–29–17; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Energy Information Administration

#### Agency Information Collection Extension, With Changes

**AGENCY:** U.S. Energy Information Administration (EIA), Department of Energy.

**ACTION:** Notice and request for OMB review and comment.

**SUMMARY:** The information collection requests a three-year extension of Form EIA–914 *Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report*, OMB Control Number 1905–0205. This survey collects monthly state level data by well operator on crude oil and natural gas production within the United States. These data are used by EIA to estimate state, regional, and U.S. crude oil and natural gas production.

**DATES:** Comments regarding this proposed information collection must be received on or before November 1,

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, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

**ADDRESSES:** Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503, *Chad S Whiteman@omb.eop.gov*

And to:

U.S. Department of Energy, U.S. Energy Information Administration, Attn: Jessica Biercevicz, EI–24, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, *jessica.biercevicz@eia.gov*

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Jessica Biercevicz, Phone: 202–586–4299, Email: *jessica.biercevicz@eia.gov*.

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) OMB No. 1905–0205; (2) Information Collection Request Title: *Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report*; (3) Type of Request: Three-year extension with changes; (4) Purpose: Form EIA–914 *Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report*, collects monthly data on natural gas production, crude oil and lease condensate production, and crude oil and lease condensate sales by API gravity category in 22 states/areas (Alabama, Arkansas, California (including State Offshore), Colorado, Federal Offshore Gulf of Mexico, Federal Offshore Pacific, Kansas, Louisiana (including State Offshore), Michigan, Mississippi (including State Offshore), Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas (including State Offshore), Utah, Virginia, West Virginia, Wyoming, and Other States (defined as all remaining states, except Alaska)). The data are published in the *Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report* on EIA's Web site, and in the EIA publications: *Monthly Energy Review*, *Petroleum Supply Annual* volume I, *Petroleum Supply Annual* volume II, *Petroleum Supply Monthly*, *Natural Gas Annual*, and *Natural Gas Monthly*.

**(4a) Changes to Information Collection**

(1) Change the title from “Monthly Crude Oil, Lease Condensate, and Natural Gas Production Report,” to “Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report.”

(2) For Sections 2 and 3, instead of selecting only one pre-existing comment in the comments box, the box will allow for the selection of multiple frequently-used pre-existing comments, as well as the ability to write-in producer specific comments.

(3) EIA will publish separate estimates for Alabama, Federal Offshore Pacific, Michigan, Mississippi, and Virginia and will no longer include data for these states in the “Other States” category. To separately publish these five new states/areas, EIA will collect crude oil and lease condensate production, crude oil and lease condensate sales (run ticket) volumes by API gravity, natural gas gross withdrawals, and natural gas lease production volumes. As a result, EIA will publish data for a total of 21 states/areas and one category designated “Other States.” The “Other States,” category will include the remaining states of Arizona, Florida, Idaho, Illinois, Indiana, Kentucky, Maryland, Missouri, Nebraska, Nevada, New York, Oregon, Tennessee, and South Dakota.

(5) Annual Estimated Number of Respondents: 500; (6) Annual Estimated Number of Total Responses: 6,000; (7) Annual Estimated Number of Burden Hours: 24,000; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: EIA estimates that there are no capital and start-up costs associated with this data collection. The information is maintained during the normal course of business. The cost of burden hours to the respondents is estimated to be \$1,767,840 (24,000 burden hours times \$73.66). Other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining, and providing this information.

**Statutory authority:** Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified as 15 U.S.C. 772(b) and the DOE Organization Act of 1977, P.L. 95–91, codified at 42 U.S.C. 7101 *et seq.*

Issued in Washington, DC, on September 27, 2017.

**Tom Leckey,**

*Assistant Administrator, Office of Energy Statistics, U.S. Energy Information Administration.*

[FR Doc. 2017–21076 Filed 9–28–17; 11:15 am]

**BILLING CODE 6450–01–P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket EF17–4–000]

**Before Commissioners: Neil Chatterjee, Chairman; Cheryl A. LaFleur, and Robert F. Powelson; Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments**

1. In this order, we approve on an interim basis Bonneville Power Administration’s (Bonneville) proposed 2018–2019 transmission rates for transmission service on the Southern Intertie (IS Rates),<sup>1</sup> pending our further review.<sup>2</sup> We also provide an additional period of time for parties to file comments.

**I. Background**

2. On July 31, 2017,<sup>3</sup> Bonneville filed a request for interim and final approval of its IS Rates (IS–18) in accordance with section 7 of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)<sup>4</sup> and Part 300 of the Commission’s regulations.<sup>5</sup> Bonneville states that, although its rate design is not subject to Commission review, it provides a summary of the hourly rate design change on the Southern Intertie for informational purposes. Bonneville explains that the change is significant, increasing the hourly rates approximately 170 percent, but asserts that the adopted revisions are necessary to address the impact of increased renewable generation in California in combination with seams issues between the transmission system connecting the Pacific Northwest and California.<sup>6</sup>

3. Bonneville projects that the filed rates will produce average annual transmission revenues of \$1.044 billion

<sup>1</sup> The Southern Intertie is a system of transmission lines and substations that transmit power between the Pacific Northwest and California, and is primarily used to export power from the Pacific Northwest and Canada to California. Bonneville Administrator’s Final Record of Decision 5.2.2.

<sup>2</sup> Today, we also approve on an interim basis Bonneville’s other transmission rates filed in Docket No. EF17–3–000. *See Bonneville Power Admin.*, 160 FERC ¶61,112 (2017).

<sup>3</sup> Bonneville submitted errata filings on August 7, 2017, and August 10, 2017 to correct various attachments to the July 31, 2017 Transmittal Letter and to add inadvertently omitted documents to the record.

<sup>4</sup> 16 U.S.C. 839e (2012).

<sup>5</sup> 18 CFR pt. 300 (2017).

<sup>6</sup> Bonneville July 31, 2017 Transmittal Letter at 2. *See also* Bonneville Administrator’s Final Record of Decision § 5.2.2 (explaining the justification for the rate increase in greater detail).

and annual net revenues of \$4.65 million.<sup>7</sup> Bonneville asserts that this level of annual revenues is sufficient to recover its costs for the 2018–2019 rate approval period, while providing cash flow to ensure at least a 95 percent probability of making all payments to the United States Treasury in full and on time for each year of the rate period.<sup>8</sup>

**II. Notice of Filing**

4. Notice of Bonneville’s July 31, 2017 filing was published in the **Federal Register**, 82 FR 37,445 (2017),<sup>9</sup> with protests and interventions due on or before August 30, 2017. Timely motions to intervene were filed by Pacific Northwest Generating Cooperative, Powerex Corporation, Sierra Club and Montana Environmental Information Center, Avista Corporation, Northwest Requirements Utilities, Industrial Customers of Northwest Utilities, NorthWestern Corporation, Western Public Agencies Group, M–S–R Public Power Agency, Snohomish County Public Utility District No. 1, Public Power Council, Puget Sound Energy Inc., Idaho Power Company, and Avangrid Renewables LLC. Renewable Northwest filed a timely motion to intervene and comments. Sacramento Municipal Utility District, Transmission Agency of Northern California, and Turlock Irrigation District (collectively, Northern California Utilities) filed a timely motion to intervene, protest, objection to the motion for interim rate approval, request for an evidentiary hearing, and alternative request for stay of implementation of hourly transmission rates. On September 15, 2017, Bonneville filed a request for leave to answer and an answer to Northern California Utilities’ protest, and on September 19, 2017, Northern California Utilities filed an answer to Bonneville’s answer. On September 22, 2017, Bonneville filed an answer to Northern California Utilities’ September 19 answer.

5. Northern California Utilities generally object to Bonneville’s proposed rate increase for southbound hourly transmission service on the

<sup>7</sup> These values are the totals of all of Bonneville’s transmission revenues, inclusive of the transmission rates at issue in Docket No. EF17–3–000. *See* Bonneville August 7, 2017 Transmittal Letter at 2; *Bonneville Power Admin.*, 160 FERC ¶61,112 (2017) (approving on an interim basis those transmission rates not associated with the Southern Intertie).

<sup>8</sup> Bonneville July 31, 2017 Transmittal Letter at 4, 7.

<sup>9</sup> Notices of Bonneville’s errata filings were published in the **Federal Register**, 82 FR 41,014 (2017) and 82 FR 40,151 (2017). The notices of the errata filings retained the August 30, 2017 date by which protests or interventions were due.

Southern Intertie.<sup>10</sup> Northern California Utilities first argue that interim approval is inappropriate because Bonneville's filing is deficient. Specifically, Northern California Utilities argue that the instant filing is governed by section 7(k) of the Northwest Power Act, which according to the protestors is broader than section 7(a), and Bonneville fails to comply with the applicable statutes.<sup>11</sup> They further assert that Bonneville's filing is deficient under the Commission's regulations because its rates fail to adhere to cost-based ratemaking, or alternatively, Bonneville's filing fails to explain why it has departed from cost-based ratemaking standards.<sup>12</sup> In addition, Northern California Utilities argue that any refund condition that the Commission attaches to its order will not protect them because they do not purchase transmission service from Bonneville on the Southern Intertie.<sup>13</sup> Alternatively, the Northern California Utilities argue that, if the Commission will not summarily reject Bonneville's IS Rate, the Commission should nevertheless stay implementation of the rate.<sup>14</sup>

6. Northern California Utilities further argue that the Commission should summarily dispose of Bonneville's request for approval because it has failed to carry its burden and provide substantial evidence of its rates being the lowest reasonable rates consistent with sound business principles. Here, Northern California Utilities again assert that section 7(k) of the Northwest Power Act sets the applicable standard and that charging intentionally unaffordable rates is facially in conflict with the statutory provision.<sup>15</sup> Alternatively, Northern California Utilities argue that, if the Commission does not reject the IS Rate filing as deficient or on the merits, it should set those issues for evidentiary hearings under section 7(k) of the Northwest Power Act.<sup>16</sup>

7. Renewable Northwest filed comments in both this docket and Docket No. EF17-3-000 requesting that the Commission disapprove Bonneville's proposed Montana Intertie Rate on the basis that it does not "encourage[e] the widest possible

diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles."<sup>17</sup>

### III. Discussion

#### A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2) (2017), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Bonneville's answer to Northern California Utilities' protest, Northern California Utilities' answer to Bonneville's answer, or Bonneville's answer to Northern California Utilities' answer, and therefore, we reject all answers.

#### B. Standard of Review

10. Under the Northwest Power Act, the Commission's review of Bonneville's transmission rates is limited to determining whether Bonneville's proposed rates satisfy the specific requirements of section 7(a)(2) of the Northwest Power Act, including that such rates:

(A) Are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting [Bonneville's] other costs;

(B) are based upon [Bonneville's] total system costs; and

(C) insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system.<sup>18</sup>

11. Unlike the Commission's statutory authority under the Federal Power Act, the Commission's authority under section 7(a) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville's Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the

Commission's role can be viewed as an appellate one: To affirm or remand the rates submitted to it for review.<sup>19</sup>

12. Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before us in this filing, and the limited period in advance of the requested effective date in which to review the application,<sup>20</sup> the Commission generally defers resolution of issues on the merits of Bonneville's application until the order on final confirmation. Thus, the Commission generally approves the proposed rates on an interim basis, unless the filing is patently deficient, and provides the parties with an additional opportunity to raise issues with regard to Bonneville's filing.<sup>21</sup>

13. We decline at this time to grant Bonneville's request for final confirmation and approval of Bonneville's proposed transmission rates. However, we will grant Bonneville's request for interim approval. Our preliminary review indicates that Bonneville's IS Rates filing appears to meet the statutory standards and the minimum threshold filing requirements of Part 300 of the Commission's regulations.<sup>22</sup> Moreover, our preliminary review of Bonneville's submittal indicates that the filing is not patently deficient. Contrary to the Northern California Utilities' arguments, we find that section 7(a) of the Northwest Power Act, and not section 7(k), governs the transmission rates at issue here and thus governs our review.<sup>23</sup> The language of section 7(k) of

<sup>19</sup> See, e.g., *Bonneville Power Admin.*, 152 FERC ¶ 61,201, at P 10 (2015) (citing *U.S. Dep't of Energy—Bonneville Power Admin.*, 67 FERC ¶ 61,351, at 62,216–17 (1994); see also *Aluminum Co. of Am. v. Bonneville Power Admin.*, 903 F.2d 585, 592–93 (9th Cir. 1989)).

<sup>20</sup> See 18 CFR 300.10(a)(3)(ii) (2017).

<sup>21</sup> See, e.g., *Bonneville Power Admin.*, 152 FERC ¶ 61,201 at P 11 (citing *U.S. Dep't of Energy—Bonneville Power Admin.*, 64 FERC ¶ 61,375, at 63,606 (1993); *U.S. Dep't of Energy—Bonneville Power Admin.*, 40 FERC ¶ 61,351, at 62,059–60 (1987)).

<sup>22</sup> See, e.g., *id.* P 12 (citing *U.S. Dep't of Energy—Bonneville Power Admin.*, 105 FERC ¶ 61,006, at PP 13–14 (2003); *U.S. Dep't of Energy—Bonneville Power Admin.*, 96 FERC ¶ 61,360, at 62,358 (2001)).

<sup>23</sup> See 16 U.S.C. 839e(k) (2012) (stating "Notwithstanding any other provision of this chapter, all rates or rate schedules for the sale of nonfirm electric power. . . ." (emphasis added)); 16 U.S.C. 839a(9) (2012) (defining "[e]lectric power" within the Northwest Power Act as "electric peaking capacity, or electric energy, or both."); *Aluminum Co. of Am. v. Bonneville Power Admin.*, 903 F.2d 585, 587–89 (discussing the first nonfirm power rates that Bonneville established under section 7(k) and defining nonfirm power as "energy in excess of firm power, and is provided only when such excess exists."); *U.S. Dep't of Energy—Bonneville Power Admin.*, 53 FERC ¶ 61,193, 61,667 (1990) (stating that "nonfirm energy is energy in excess of that which Bonneville

<sup>10</sup> Northern California Utilities Protest at 5–6, 80.

<sup>11</sup> *Id.* at 12–15, 23–25.

<sup>12</sup> *Id.* at 16–23.

<sup>13</sup> *Id.* at 25–27. Northern California Utilities state that they do not directly purchase transmission service from Bonneville, but that they will be harmed nonetheless by the trickle-down effects of the hourly rate increase because they purchase services from resellers that use or base prices on the Southern Intertie, including but not limited to hourly transmission service. *Id.*

<sup>14</sup> *Id.* at 27–51.

<sup>15</sup> *Id.* at 52–59.

<sup>16</sup> *Id.* at 59–79.

<sup>17</sup> Renewable Northwest Comments at 7 (quoting 16 U.S.C. 838g (2012)). We note that the Montana Intertie Rate is not at issue in this docket, but rather is before the Commission in Docket No. EF17-3-000. See *Bonneville Power Admin.*, 160 FERC ¶ 61,112.

<sup>18</sup> 16 U.S.C. 839e(a)(2) (2012). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

the Northwest Power Act addresses power rates, not transmission rates.<sup>24</sup> Thus, Northern California Utilities' arguments that Bonneville's filing is deficient for failing to meet the statutory standards of section 7(k) of the Northwest Power Act and the Commission's regulations promulgated pursuant to section 7(k), specifically 18 CFR 300.14 (2017) and by incorporation 18 CFR 35.13(a)(2) (2017), are irrelevant to our approval on an interim basis of Bonneville's transmission rates for the Southern Intertie.<sup>25</sup> The proposed rates therefore will be approved on an interim basis pending our further review. In addition, we note that interim approval allows Bonneville's rates to go into effect subject to refund with interest; the Commission may order refunds with interest if the Commission later determines in its final decision not to approve the rates.<sup>26</sup>

14. In addition, we will provide an additional period of time for parties to file comments and reply comments on issues related to final confirmation and approval of Bonneville's proposed rates. This will ensure that the record in this proceeding is complete and fully developed. Specifically, if parties wish to file additional comments, they will be due within 30 days of the date of this order. Reply comments are due 20 days thereafter.

#### The Commission Orders

(A) Interim approval of Bonneville's proposed IS Rates is hereby granted, to become effective on October 1, 2017, through September 30, 2019, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations, 18 CFR 300.20(c) (2017), pending final action and either their approval or their disapproval.

(B) Within 30 days of the date of this order, parties who wish to do so may file additional comments regarding final confirmation and approval of

can reliably plan on producing, based on estimates that water levels used for power generation will at times be low or critical. That is, nonfirm energy is energy that is available to Bonneville as the result of it[ ] having water available for power generation. . . .").

<sup>24</sup> See 16 U.S.C. 839e(k) (2012) ("Notwithstanding any other provision of this chapter, all rates or rate schedules for the sale of nonfirm electric power. . . ." (emphasis added)).

<sup>25</sup> Because section 7(k) of the Northwest Power Act does not govern our review of the rates at issue in this proceeding, section 7(k)'s allowance for a further trial-type evidentiary hearing does not provide a basis for such a trial-type evidentiary hearing here.

<sup>26</sup> See 18 CFR 300.20(c) (2017). We further find that Northern California Utilities' arguments that our refund condition will not protect them to be speculative, and their request for the Commission to stay implementation of the rates to be unsupported.

Bonneville's proposed rates. Parties who wish to do so may file reply comments within 20 days thereafter.

(C) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Issued: September 25, 2017.

**Kimberly D. Bose,**

Secretary.

[FR Doc. 2017-21061 Filed 9-29-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17-187-000.

*Applicants:* Westwood Generation, LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act of Westwood Generation, LLC.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922-5033.

*Comments Due:* 5 p.m. ET 10/13/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17-1721-003.

*Applicants:* Dynegy Stuart, LLC.

*Description:* Tariff Amendment: Superseded Revised Rate Schedule to be effective 8/1/2017.

*Filed Date:* 9/20/17.

*Accession Number:* 20170920-5180.

*Comments Due:* 5 p.m. ET 10/11/17.

*Docket Numbers:* ER17-2536-000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* § 205(d) Rate Filing: Port of Oakland Unexecuted IA (SA 347) to be effective 11/22/2017.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922-5001.

*Comments Due:* 5 p.m. ET 10/13/17.

*Docket Numbers:* ER17-2537-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 1876R5 KEPCO NITSA to be effective 9/1/2017.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922-5031.

*Comments Due:* 5 p.m. ET 10/13/17.

*Docket Numbers:* ER17-2538-000.

*Applicants:* AEP Generation Resources Inc.

*Description:* § 205(d) Rate Filing: AEP GR Stuart Station Unit 1 Reactive Filing RS3 to be effective 10/1/2017.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922-5047.

*Comments Due:* 5 p.m. ET 10/13/17.

*Docket Numbers:* ER17-2539-000.

*Applicants:* NSTAR Electric Company.

*Description:* Tariff Cancellation: Notice of Cancellation of Belmont Transmission Service Agreement to be effective 9/30/2017.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922-5056.

*Comments Due:* 5 p.m. ET 10/13/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 22, 2017.

**Nathaniel J. Davis, Sr.,**

Deputy Secretary.

[FR Doc. 2017-20995 Filed 9-29-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17-191-000.

*Applicants:* Brady Wind, LLC, Brady Wind II, LLC, Brady Interconnection, LLC, Desert Sunlight 250, LLC, Desert Sunlight 300, LLC, NEP US SellCo, LLC, NextEra Energy Partners Acquisitions, LLC.

*Description:* Application for Authorization Under Section 204 of the Federal Power Act and Request for Expedited Action of Brady Wind, LLC, et al.

*Filed Date:* 9/25/17.

*Accession Number:* 20170925-5146.

*Comments Due:* 5 p.m. ET 10/16/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17–2534–001.

*Applicants:* Arizona Public Service Company.

*Description:* Tariff Amendment: Amendment to Service Agreement No. 300 to be effective 1/1/2017.

*Filed Date:* 9/26/17.

*Accession Number:* 20170926–5052.

*Comments Due:* 5 p.m. ET 10/17/17.

*Docket Numbers:* ER17–2547–000.

*Applicants:* Great Bay Hydro Corporation.

*Description:* Tariff Cancellation: Notice of Cancellation to be effective 10/1/2017.

*Filed Date:* 9/25/17.

*Accession Number:* 20170925–5102.

*Comments Due:* 5 p.m. ET 10/16/17.

*Docket Numbers:* ER17–2548–000.

*Applicants:* EGP Stillwater Solar PV II, LLC.

*Description:* Baseline eTariff Filing: EGP Stillwater Solar PV II, LLC MBR Tariff to be effective 10/1/2017.

*Filed Date:* 9/26/17.

*Accession Number:* 20170926–5050.

*Comments Due:* 5 p.m. ET 10/17/17.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES17–58–000.

*Applicants:* PPL Electric Utilities Corporation.

*Description:* Application under Section 204 of the Federal Power Act of PPL Electric Utilities Corporation.

*Filed Date:* 9/26/17.

*Accession Number:* 20170926–5039.

*Comments Due:* 5 p.m. ET 10/17/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 26, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–21021 Filed 9–29–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17–188–000.

*Applicants:* Milford Wind Corridor Phase I, LLC, Milford Wind Corridor Phase II, LLC.

*Description:* Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Milford Wind Corridor Phase I, LLC, et al.

*Filed Date:* 9/25/17.

*Accession Number:* 20170925–5027.

*Comments Due:* 5 p.m. ET 10/16/17.

*Docket Numbers:* EC17–189–000.

*Applicants:* Innovative Solar 42, LLC.  
*Description:* Application for Authorization under Section 203 of the Federal Power Act and Request for Waivers, Confidential Treatment, Expedited Action and Shortened Comment Period of Innovative Solar 42, LLC.

*Filed Date:* 9/25/17.

*Accession Number:* 20170925–5042.

*Comments Due:* 5 p.m. ET 10/16/17.

*Docket Numbers:* EC17–190–000.

*Applicants:* American Electric Power Service Corporation.

*Description:* Application Under Section 203 of the Federal Power Act to Acquire Transmission Facilities and Request for Expedited Consideration, et al. of American Electric Power Service Corporation, et al.

*Filed Date:* 9/25/17.

*Accession Number:* 20170925–5082.

*Comments Due:* 5 p.m. ET 10/16/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17–1914–001.

*Applicants:* Tucson Electric Power Company.

*Description:* Tariff Amendment: Response to Deficiency Letter to be effective 5/28/2017.

*Filed Date:* 9/25/17.

*Accession Number:* 20170925–5046.

*Comments Due:* 5 p.m. ET 10/16/17.

*Docket Numbers:* ER17–2546–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2017–09–25 SA 3054 IWF Holdings-ITCM GIA (J041) to be effective 9/11/2017.

*Filed Date:* 9/25/17.

*Accession Number:* 20170925–5047.

*Comments Due:* 5 p.m. ET 10/16/17.

Take notice that the Commission received the following foreign utility company status filings:

*Docket Numbers:* FC17–8–000.

*Applicants:* Amplus Andhra Power Private Limited.

*Description:* Notification of Self-Certification of Foreign Utility Company Status of Amplus Andhra Power Private Limited, et al.

*Filed Date:* 9/25/17.

*Accession Number:* 20170925–5039.

*Comments Due:* 5 p.m. ET 10/16/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 25, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–20998 Filed 9–29–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17–2540–000.

*Applicants:* Imperial Valley Solar 1, LLC.

*Description:* § 205(d) Rate Filing: Certificate of Concurrence Solar 3 to be effective 9/25/2017.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922–5090.

*Comments Due:* 5 p.m. ET 10/13/17.

*Docket Numbers:* ER17–2541–000.

*Applicants:* Estill Solar I, LLC.

*Description:* Baseline eTariff Filing: MBR Application to be effective 11/22/2017.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922–5093.

*Comments Due:* 5 p.m. ET 10/13/17.

*Docket Numbers:* ER17–2542–000.

*Applicants:* Northern States Power Company, a Minnesota corporation.

*Description:* § 205(d) Rate Filing: 2017–9–22 NSP–MGE–LBA Filing–0.0.0–650 to be effective 11/22/2017.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922–5116.

*Comments Due:* 5 p.m. ET 10/13/17.

*Docket Numbers:* ER17–2543–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 2415R8 KMEA NITSA NOA and Cancellation of Westar NITSA NOA SA 2390 to be effective 9/1/2017.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922–5120.

*Comments Due:* 5 p.m. ET 10/13/17.

*Docket Numbers:* ER17–2544–000.

*Applicants:* Northern States Power Company, a Wisconsin corporation.

*Description:* § 205(d) Rate Filing: 2017–9–22 NSPW Concur to NSPM MGE LBA Filing–0.0.0–650 to be effective 11/22/2017.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922–5122.

*Comments Due:* 5 p.m. ET 10/13/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 22, 2017.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2017–20996 Filed 9–29–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EF17–3–000]

#### Bonneville Power Administration; Order Approving Rates on an Interim Basis and Providing Opportunity for Additional Comments

Before Commissioners: Neil Chatterjee, Chairman; Cheryl A. LaFleur, and Robert F. Powelson.

1. In this order, we approve on an interim basis Bonneville Power Administration's (Bonneville) proposed 2018–2019 transmission rates, with the exception of the rates for transmission service on the Southern Intertie, which are addressed separately in another order, pending our further review. We also provide an additional period of time for parties to file comments.

#### I. Background

2. On July 31, 2017,<sup>1</sup> Bonneville filed a request for interim and final approval of its transmission rates<sup>2</sup> in accordance with section 7 of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)<sup>3</sup> and Part 300 of the Commission's regulations.<sup>4</sup> Bonneville projects that the filed rates will produce average annual transmission revenues of \$1.044 billion and annual net revenues of \$4.65 million.<sup>5</sup> Bonneville asserts that this level of annual revenues is sufficient to recover its costs for the 2018–2019 rate approval period, while providing cash flow to ensure at least a 95 percent

<sup>1</sup> Bonneville submitted errata filings on August 7, 2017, and August 10, 2017, respectively, to correct various attachments to the July 31, 2017 Transmittal Letter and to add inadvertently omitted documents to the record.

<sup>2</sup> The proposed transmission rates for which Bonneville seeks approval for the period of October 1, 2017 through September 30, 2019 are: Formula Power Transmission Rate (FPT–18.1); Formula Power Transmission Rate (FPT–18.3); Integration of Resources Rate (IR–18); Network Integration Rate (NT–18); Point-to-Point Rate (PTP–18); Montana Intertie Rate (IM–18) (IM Rate); Use-of-Facilities Transmission Rate (UFT–18); Advance Funding Rate (AF–18); Townsend-Garrison Transmission Rate (TGT–18); WECC and Peak Service Rate (PW–18); Oversupply Rate (OS–18); Eastern Intertie Rate (IE–18); Ancillary and Control Area Services Rates (ACS–18); and Transmission General Rate Schedule Provisions. Bonneville July 31, 2017 Transmittal Letter at 3.

<sup>3</sup> 16 U.S.C. 839e (2012).

<sup>4</sup> 18 CFR pt. 300 (2017).

<sup>5</sup> These values are the totals of all of Bonneville's transmission revenues, inclusive of the transmission rates at issue in Docket No. EF17–4–000. See Bonneville August 7, 2017 Transmittal Letter at 2; *Bonneville Power Admin.*, 160 FERC ¶ 61,113 (2017) (approving on an interim basis the transmission rates associated with the Southern Intertie).

probability of making all payments to the United States Treasury in full and on time for each year of the rate period.<sup>6</sup>

#### II. Notice of Filing

3. Notice of Bonneville's July 31, 2017 filing was published in the **Federal Register**, 82 FR 37,445 (2017),<sup>7</sup> with protests and interventions due on or before August 30, 2017. Timely motions to intervene were filed by Pacific Northwest Generating Cooperative, Powerex Corporation, Turlock Irrigation District, Avista Corporation, Sacramento Municipal Utility District, Northwest Requirements Utilities, Industrial Customers of Northwest Utilities, NorthWestern Corporation, Western Public Agencies Group, M–S–R Public Power Agency, Snohomish County Public Utility District No. 1, Public Power Council, Puget Sound Energy Inc., Idaho Power Company, and Avangrid Renewables LLC. Renewable Northwest filed a timely motion to intervene and comments. Sierra Club and Montana Environmental Information Center (Sierra Club/MEIC) filed a timely motion to intervene and protest. On September 14, 2017, Bonneville filed a request for leave to answer and answer to Sierra Club/MEIC's protest and Renewable Northwest's comments.

4. Sierra Club/MEIC argues that eliminating Bonneville's IM Rate,<sup>8</sup> in particular, is necessary to meet Bonneville's statutory mandate to encourage the widest possible diversified use of electric power at the lowest possible rates to consumers, consistent with sound business principles.<sup>9</sup> Sierra Club/MEIC asserts that the IM Rate is the primary impediment to renewable resource development in Montana.<sup>10</sup> Sierra Club/MEIC explains that Bonneville effectively charges two rates for Montana producers seeking to use the Eastern Intertie—the IM Rate and the Network Rate—which inequitably allocates transmission costs and has impeded subscription of the Eastern Intertie.<sup>11</sup> According to Sierra Club/

<sup>6</sup> Bonneville July 31, 2017 Transmittal Letter at 5, 8.

<sup>7</sup> Notices of Bonneville's errata filings were published in the **Federal Register**, 82 FR 41,014 (2017) and 82 FR 40,151 (2017). The notices of the errata filings retained the August 30, 2017 date by which protests or interventions were due.

<sup>8</sup> The IM Rate is the rate that Bonneville charges for the available 200 megawatts (MW) of capacity on the Eastern Intertie, which is the portion of the Montana Intertie between the Townsend and Garrison substations in western Montana that Bonneville built and continues to operate.

<sup>9</sup> Sierra Club/MEIC Protest at 1.

<sup>10</sup> *Id.* at 11.

<sup>11</sup> *Id.* at 2–3, 11.

MEIC, eliminating this “pancake” rate structure would enable high-quality Montana wind resources to affordably transmit their power and meet growing needs for renewable power in the Pacific Northwest.<sup>12</sup> Sierra Club/MEIC states that the IM Rate yields very little revenue for Bonneville because it is undersubscribed, and that cost recovery principles, cost causation principles, and Bonneville’s segmentation policy do not support maintaining the IM Rate.<sup>13</sup> Lastly, Sierra Club/MEIC states that speculation on future upgrades to Bonneville’s transmission network is not a legitimate basis for maintaining the IM Rate, and eliminating the IM Rate does not require Bonneville to roll-in the Southern Intertie.<sup>14</sup> Sierra Club/MEIC urges the Commission to disapprove the IM Rate and direct Bonneville to establish a rate structure for the Eastern Intertie that is consistent with Bonneville’s statutory mandate.<sup>15</sup>

5. Renewable Northwest similarly filed comments requesting that the Commission disapprove Bonneville’s proposed IM Rate on the basis that the rate does not “encourag[e] the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with sound business principles.”<sup>16</sup> Renewable Northwest asserts that the IM Rate imposes a financial disadvantage that is a disincentive to the use of Bonneville’s 184 MW of unsubscribed Eastern Intertie capacity.<sup>17</sup> Renewable Northwest suggests that eliminating the IM Rate would encourage subscription of Eastern Intertie capacity and generate additional revenue for Bonneville.<sup>18</sup> Renewable Northwest encourages the Commission to direct Bonneville to work with stakeholders on a rate structure that would encourage subscription of Bonneville’s available Eastern Intertie capacity in a manner that is consistent with Bonneville’s statutory directives.<sup>19</sup>

### III. Discussion

#### A. Procedural Matters

6. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 CFR 385.214 (2017), the timely, unopposed motions to intervene

serve to make the entities that filed them parties to this proceeding.

7. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 CFR 385.213(a)(2) (2017), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Bonneville’s answer to the comments and protests, and therefore, reject it.

#### B. Standard of Review

8. Under the Northwest Power Act, our review of Bonneville’s transmission rates is limited to determining whether Bonneville’s proposed rates satisfy the specific requirements of section 7(a)(2) of the Northwest Power Act, including that such rates:

(A) Are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting [Bonneville’s] other costs;

(B) Are based upon [Bonneville’s] total system costs; and

(C) Insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal power utilizing such system.<sup>20</sup>

9. Unlike the Commission’s statutory authority under the Federal Power Act, the Commission’s authority under section 7(a) of the Northwest Power Act does not include the power to modify the rates. The responsibility for developing rates in the first instance is vested with Bonneville’s Administrator. The rates are then submitted to the Commission for approval or disapproval. In this regard, the Commission’s role can be viewed as an appellate one: To affirm or remand the rates submitted to it for review.<sup>21</sup>

10. Moreover, review at this interim stage is further limited. In view of the volume and complexity of a Bonneville rate application, such as the one now before the Commission in this filing, and the limited period in advance of the requested effective date in which to review the application,<sup>22</sup> the Commission generally defers resolution of issues on the merits of Bonneville’s application until the order on final confirmation. Thus, we generally approve the proposed rates on an

interim basis, unless the filing is patently deficient, and provide the parties with an additional opportunity to raise issues with regard to Bonneville’s filing.<sup>23</sup>

11. We decline at this time to grant Bonneville’s request for final confirmation and approval of Bonneville’s proposed transmission rates. However, we will grant Bonneville’s request for interim approval. Our preliminary review indicates that Bonneville’s transmission rates filing appears to meet the statutory standards and the minimum threshold filing requirements of Part 300 of the Commission’s regulations.<sup>24</sup> Moreover, our preliminary review of Bonneville’s submittal indicates that it does not contain any patent deficiencies. The proposed rates, with the exception of the rates for transmission service on the Southern Intertie which are addressed separately in another order, therefore will be approved on an interim basis pending our further review. In addition, we note that no one will be harmed by this decision because interim approval allows Bonneville’s rates to go into effect subject to refund with interest; the Commission may order refunds with interest if the Commission later determines in its final decision not to approve the rates.<sup>25</sup>

12. We will also provide an additional period of time for parties to file comments and reply comments on issues related to final confirmation and approval of Bonneville’s proposed rates. This will ensure that the record in this proceeding is complete and fully developed. Specifically, if parties wish to file additional comments, they will be due within 30 days of the date of this order. Reply comments are due 20 days thereafter.

The Commission orders:

(A) Interim approval of Bonneville’s proposed transmission rates, with the exception of the rates for transmission service on the Southern Intertie, is hereby granted, to become effective on October 1, 2017, through September 30, 2019, subject to refund with interest as set forth in section 300.20(c) of the Commission’s regulations, 18 CFR 300.20(c), pending final action and

<sup>12</sup> *Id.* at 2–3.

<sup>13</sup> *Id.* at 3, 12.

<sup>14</sup> *Id.* at 31, 33.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> Renewable Northwest Comments at 7 (quoting 16 U.S.C. 838g (2012)).

<sup>17</sup> Of the 200 MW available on the Eastern Intertie that are subject to the IM Rate, 16 MW are subscribed, leaving 184 MW still available. *Id.*

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 10.

<sup>20</sup> 16 U.S.C. 839e(a)(2) (2012). Bonneville also must comply with the financial, accounting, and ratemaking requirements in Department of Energy Order No. RA 6120.2.

<sup>21</sup> See, e.g., *Bonneville Power Admin.*, 152 FERC ¶ 61,201, at P 10 (2015) (citing *U.S. Dep’t of Energy—Bonneville Power Admin.*, 67 FERC ¶ 61,351, at 62,216–17 (1994); *Aluminum Co. of Am. v. Bonneville Power Admin.*, 903 F.2d 585, 592–93 (9th Cir. 1989)).

<sup>22</sup> See 18 CFR 300.10(a)(3)(ii) (2017).

<sup>23</sup> See, e.g., *Bonneville Power Admin.*, 152 FERC ¶ 61,201 at P 11 (citing *U.S. Dep’t of Energy—Bonneville Power Admin.*, 64 FERC ¶ 61,375, at 63,606 (1993); *U.S. Dep’t of Energy—Bonneville Power Admin.*, 40 FERC ¶ 61,351, at 62,059–60 (1987)).

<sup>24</sup> See, e.g., *id.* P 12 (citing *U.S. Dep’t of Energy—Bonneville Power Admin.*, 105 FERC ¶ 61,006, at PP 13–14 (2003); *U.S. Dep’t of Energy—Bonneville Power Admin.*, 96 FERC ¶ 61,360, at 62,358 (2001)).

<sup>25</sup> 18 CFR 300.20(c) (2017).

either their approval or their disapproval.

(B) Within 30 days of the date of this order, parties who wish to do so may file additional comments regarding final confirmation and approval of Bonneville's proposed rates. Parties who wish to do so may file reply comments within 20 days thereafter.

(C) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Issued: September 25, 2017.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2017-21060 Filed 9-29-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP17-493-000]

#### Colorado Interstate Gas Company, LLC'; Notice of Application

Take notice that on September 14, 2017, Colorado Interstate Gas Company, LLC (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP17-493-000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting an order authorizing the abandonment of certain facilities related to the Rawlins Processing Plant, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or TTY, contact (202) 502-8659.

Any questions concerning this application may be directed to Francisco Tarin, Director, Regulatory Affairs, Colorado Interstate Gas Company, LLC, P.O. Box 1087, Colorado Springs, Colorado, 80944 at (719) 667-7517 or Mark A. Minich, Assistant General Counsel, Colorado Interstate Gas Company, LLC, P.O. Box 1087, Colorado Springs, Colorado, 80944 at (719) 520-4416.

Specifically, CIG is requesting approval for the abandonment in place of the Rawlins lean oil processing and fractionation plants, as well as natural gas liquids truck off-loading facilities, and natural gas liquids interconnecting

facilities that tie into the Overland Pass Pipeline Company all located in Carbon County, Wyoming; and the abandonment by sale of natural gas liquids pipelines, associated natural gas liquids measurement facilities, and natural gas liquids rail loading facilities to Sinclair Wyoming Refining Company.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be

taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentators will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentators will not be required to serve copies of filed documents on all other parties. However, the non-party commentators will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on October 17, 2017.

Dated: September 26, 2017.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2017-21059 Filed 9-29-17; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17–144–000.

*Applicants:* Noble Americas Gas & Power Corp., Mercuria Energy America, Inc.

*Description:* Supplement to July 31, 2017 Joint Application for Authorization under Section 203 of the Federal Power Act by Mercuria Energy America, Inc.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922–5179.

*Comments Due:* 5 p.m. ET 9/27/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17–2336–002.

*Applicants:* Shoreham Solar Commons LLC.

*Description:* Tariff Amendment: Second Supplement to Market-Based Rate Application to be effective 11/22/2017.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922–5165.

*Comments Due:* 5 p.m. ET 10/13/17.

*Docket Numbers:* ER17–2337–002.

*Applicants:* Shoreham Solar Commons Holdings LLC.

*Description:* Tariff Amendment: Second Supplement to Market-Based Rate Application to be effective 11/22/2017.

*Filed Date:* 9/22/17.

*Accession Number:* 20170922–5166.

*Comments Due:* 5 p.m. ET 10/13/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 25, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–20997 Filed 9–29–17; 8:45 am]

**BILLING CODE 6717–01–P**

**ENVIRONMENTAL PROTECTION AGENCY**

[9968–44–Region 1]

**Proposed First Amendment to CERCLA Administrative Settlement Agreement and Order on Consent; Great Lakes Container Corporation Superfund Site, Coventry, Rhode Island**

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

**ACTION:** Notice of proposed settlement; request for public comments.

Notice is hereby given of a proposed First Amendment to Administrative Settlement Agreement and Order on Consent ("Settlement Agreement Amendment") under the Comprehensive Environmental Response Compensation, and Liability Act, as amended ("CERCLA"), concerning the Great Lakes Container Corporation Superfund Site in Coventry, Rhode Island with the following settling parties: Teknor Apex Company, and J P Hass and Sons and its affiliate, Hass Brothers, Inc. Pursuant to the terms of the Administrative Settlement Agreement and Order on Consent ("Settlement Agreement"), EPA Region 1 CERCLA Docket No. 01–2009–0010, with an effective date of June 8, 2010, between EPA Region 1 and certain Respondents, the Settlement Agreement is proposed to be revised to include Teknor Apex Company, and J P Hass & Sons and its affiliate, Haas Brothers, Inc., within Appendix D.3 as additional Drum Reconditioning Customers and Respondents. The Settlement Agreement Amendment requires Teknor Apex Company and J P Hass & Sons to each separately pay \$7,692.00 for Past Costs into the EPA Hazardous Substance Superfund.

For 30 days following the date of publication of this notice, EPA will receive written comments relating to the Settlement Agreement Amendment. EPA will consider all comments received and may modify or withdraw its consent to the Settlement Agreement Amendment if comments received disclose facts or considerations which indicate that the Settlement Agreement Amendment is inappropriate, improper, or inadequate. EPA's response to comments received will be available for

public inspection at 5 Post Office Square, Boston, MA 02109–3912.

**DATES:** Comments must be submitted by November 1, 2017.

**ADDRESSES:** Comments should be addressed to John Hultgren, Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (OES04–2), Boston, MA 02109–3912; (617) 918–1761, and should refer to: *In re: Great Lakes Container Corporation Superfund Site*, EPA Region 1 CERCLA Docket No. 01–2009–0010.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed Settlement Agreement Amendment and the June 8, 2010 Settlement Agreement may be obtained from John Hultgren, Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (OES04–2), Boston, MA 02109–3912; (617) 918–1761; [hultgren.john@epa.gov](mailto:hultgren.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** The Settlement Agreement Amendment includes a covenant from EPA not to sue pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607 for the Work, Past Response Costs, and Future Response costs, as those terms are defined under the Settlement Agreement, and protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4).

Dated: September 5, 2017.

**Bryan Olson,**

*Director, Office of Site Remediation and Restoration.*

[FR Doc. 2017–21116 Filed 9–29–17; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

[9968–37–ORD]

**Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Reference Method**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of the designation of a new reference method for monitoring ambient air quality.

**SUMMARY:** Notice is hereby given that the Environmental Protection Agency (EPA) has designated one new reference method for measuring concentrations of carbon monoxide (CO) in ambient air.

**FOR FURTHER INFORMATION CONTACT:** Robert Vanderpool, Exposure Methods

and Measurement Division (MD-D205-03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Email: [Vanderpool.Robert@epa.gov](mailto:Vanderpool.Robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQS) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining compliance with the NAAQS. A list of all reference or equivalent methods that have been previously designated by EPA may be found at <http://www.epa.gov/ttn/amtic/criteria.html>.

The EPA hereby announces the designation of one new reference method for measuring concentrations of CO in ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on October 26, 2015 (80 FR 65291-65468).

The new reference method for CO is an automated method (analyzer) utilizing a measurement principle based on non-dispersive infrared (NDIR) analysis and is identified as follows:

RFCA-0817-248, "Sabio Model 6050 Ambient CO Analyzer", operated in the measurement range of 0-50 ppm, at any ambient temperature in the range of 5-40 °C, at any line voltage in the range of 90-260 VAC, at any sample flow rate in the range of 0.50-0.75 L/min, in accordance with the Sabio Model 6050 Ambient CO Analyzer Instruction Manual, with or without optional zero/span ports for external calibration, and with or without an optional inlet filter.

This application for a reference method determination for this CO method was received by the Office of Research and Development on August 2, 2017. This analyzer is commercially available from the applicant, Sutron Corporation, 21 Cypress Blvd., Suite 1130, Round Rock, TX 78665.

Representative test analyzers have been tested in accordance with the applicable test procedures specified in 40 CFR part 53, as amended on October 26, 2015. After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that these methods should be designated as a reference or equivalent method.

As a designated reference or equivalent method, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, each method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the designated method description (see the identification of the method above).

Use of the method also should be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R-94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program," EPA-454/B-13-003, (both available at <http://www.epa.gov/ttn/amtic/qalist.html>). Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

Consistent or repeated noncompliance with any of these conditions should be reported to: Director, Exposure Methods and Measurement Division (MD-E205-01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Dated: September 19, 2017.

**Jennifer Orme-Zavaleta,**  
Director, National Exposure Research Laboratory.

[FR Doc. 2017-21119 Filed 9-29-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2010-0885: FRL-9964-91-OAR]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Implementation of the 2008 Ozone National Ambient Air Quality Standards for Ozone; State Implementation Plan Requirements, EPA ICR No. 2347.03, OMB Control No. 2060-0695**

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this document announces that the Environmental Protection Agency (EPA) is planning to submit a request to renew an existing approved Information Collection Request (ICR) 2347.02, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone," to the Office of Management and Budget (OMB). This existing ICR is scheduled to expire on January 31, 2018. Before submitting the ICR renewal request to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before November 1, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2010-0885, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <http://www.regulations.gov>. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Mr. H. Lynn Dail, Air Quality Policy

Division, Office of Air Quality Planning and Standards, Mail Code C539-01, Environmental Protection Agency, T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone number: (919) 541-2363; fax number: (919) 541-0824; email address: [dail.lynn@epa.gov](mailto:dail.lynn@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **How can I access the Docket and/or submit comments?**

The EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OAR-2010-0885, which is available for online viewing at <https://www.regulations.gov>, or for in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

Use <https://www.regulations.gov> to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

#### **What information is the EPA particularly interested in?**

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA specifically solicits comments and information to enable it to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) enhance the quality, utility, and clarity of the information to be collected; and,
- (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, allowing for electronic submission of responses (in this case, revisions to State Implementation Plans (SIPs) to meet planning requirements for

nonattainment areas for the 2008 ozone NAAQS).

#### **What should I consider when I prepare my comments for the EPA?**

You may find the following suggestions helpful for preparing your comments:

- 1. Explain your views as clearly as possible and provide specific examples.
- 2. Describe any assumptions that you used.
- 3. Provide copies of any technical information and/or data you used that support your views.
- 4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
- 5. Offer alternative ways to improve the collection activity.
- 6. Make sure to submit your comments by the deadline identified under **DATES**.
- 7. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

#### **What information collection activity or ICR does this apply to?**

*Affected entities:* Entities affected by this action are state and local air agencies subject to attainment planning requirements for areas designated nonattainment for the 2008 ozone NAAQS. Such planning requirements may include attainment demonstrations, Reasonable Further Progress (RFP) plans, and Reasonably Available Control Technology (RACT) and Reasonably Available Control Measure (RACM) SIP submissions. Local, state, and federal agencies are part of the North American Industrial Classification System Code number 924110. There are other entities that may be indirectly affected, due to the fact that they may comment on the draft submissions before air agencies submit them to EPA. These include potentially regulated entities, representatives of stakeholder groups, and members of the general public.

*Title:* Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Information Collection Request Renewal

*ICR numbers:* EPA ICR No. 2347.03, OMB Control No. 2060-0695.

*ICR status:* This ICR is currently scheduled to expire on January 31, 2018. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control

numbers for the EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9. They are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The PRA requires the information found in this ICR (No. 2347.03) to assess the burden (in hours and dollars) of meeting the requirements of the Implementation of the 2008 National Ambient Air Quality Standards (NAAQS) for Ozone: State Implementation Plan Requirements; Final Rule. The rule was proposed on June 6, 2013 (78 FR 34178), and promulgated on March 15, 2015 (80 FR 12264). The rule includes requirements that involve collecting information from states with areas designated nonattainment for the 2008 8-hour ozone NAAQS. These information collection milestones include but are not limited to state submissions of attainment demonstrations, RFP plans, and RACT determinations. The burden estimate in the original ICR assumed 26 state air agency respondents (state and local air agencies), including the District of Columbia, responsible for meeting attainment planning obligations for 46 designated nonattainment areas for the 2008 ozone NAAQS. The revised burden estimate in this proposed ICR renewal incorporates changes to the original estimate that affect 17 respondents with jurisdiction over 30 nonattainment areas that are in various stages of planning for attainment or maintenance of the 2008 ozone NAAQS. The time period covered by this ICR is February 1, 2018, through January 31, 2021.

*Burden Statement:* The estimated public reporting and recordkeeping burden for the original ICR was 120,000 labor hours for the 3-year period, for an estimated average burden of 4,615 hours per respondent (the number of respondents was assumed to be 26). The incremental public reporting and recordkeeping burden for this proposed collection of information is estimated to total 62,000 hours, for an average of 3,647 hours per affected respondent (the number of respondents is assumed to be 17) over the 3-year period covered by this ICR renewal. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review

instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and, to transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the agency's estimate, which is only briefly summarized here:

*Respondents/affected entities:* State and local governments.

*Estimated total number of affected respondents:* 17.

*Frequency of response:* Annual.

*Estimated total additional annual burden hours:* 20,667 hours.

*Estimated total additional annual cost:* \$1,404,757. This includes an estimated burden cost of \$0 for capital investment or maintenance and operational costs.

#### Are there changes in the estimates from the last approval?

The total estimated respondent burden during the 3-year period of this ICR renewal is 62,000 hours, compared with a total estimated respondent burden of 120,000 hours identified for the 3-year period covered by the original ICR approved by OMB.

#### What is the next step in the process for this ICR?

The EPA will consider the comments received on this proposal and will amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 10, 2017.

**Anna Marie Wood,**  
Director, Air Quality Policy Division.

[FR Doc. 2017-21117 Filed 9-29-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9968-52-Region 6]

### Notice of Final NPDES General Permit; Final NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)

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

**ACTION:** Notice of Final NPDES General Permit.

**SUMMARY:** The Director of the Water Division, EPA Region 6 today provides notice that the National Pollutant Discharge Elimination System (NPDES) General Permit No. GMG290000 for existing and new sources and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category, located in and discharging to the Outer Continental Shelf offshore of Louisiana and Texas was reissued on September 19, 2017, with an effective date of October 1, 2017. The discharge of produced water to that portion of the Outer Continental Shelf from Offshore Subcategory facilities located in the territorial seas of Louisiana and Texas is also authorized by this permit.

**DATES:** This permit was issued September 19, 2017, is effective on October 1, 2017, and expires September 30, 2022. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2012 permit on September 30, 2017. In accordance with 40 CFR 23, this permit shall be considered issued for the purpose of judicial review on October 16, 2017. Under section 509(b) of the CWA, judicial review of this general permit can be held by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for judicial review. Under section 509(b)(2) of the CWA, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part I.A.2 of the permit.

**FOR FURTHER INFORMATION CONTACT:** Ms. Evelyn Rosborough, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Telephone: (214) 665-7515. Email: [rosborough.evelyn@epa.gov](mailto:rosborough.evelyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** Notice of the proposal of the draft permit was published in the **Federal Register** on May 11, 2017. EPA Region 6 has considered all comments received and makes several significant changes as listed below. A copy of the Region's responses to comments and the final permit may be found online from the *Federal eRulemaking Portal*: <http://www.regulations.gov> with Docket ID No EPA-R6-OW-2017-0217. Significant changes include:

1. An operator is not required to file eNOI 24-hour in advance to obtain permit coverage;
2. An operator has up to one year after termination of lease ownership to file a Notice of Termination (NOT);
3. In a case-by-case circumstance, the primary operator may require day-to-day or vessel operators to file their own eNOIs for dual coverages;
4. Drilling vessels performing jobs within the same lease block may file one NOI for coverage;
5. Bridged facilities may file one eNOI;
6. In the event the eNOI system is temporarily unavailable, a written temporary NOI filed with certification and signature is good for seven days from the day of filing, but must be followed up with an eNOI;
7. Existing permittees covered under the 2012 permit will be covered by this permit until April 1, 2018, with eNOIs to continue coverage due on or before that date;
8. An oil and grease confirmation sample shall be taken within two hours after sheen is observed from produced water discharge;
9. Toxicity testing frequency for produced water discharges remains the same as in the previous permit;
10. Existing dischargers under the 2012 permit shall commence testing schedules in the 2017 permit as of the effective day of this permit;
11. Additional toxicity testing for produced water after an application of well treatment, completion or workover fluids is not required; information on these discharges will be collected as part of the well treatment, completion, and workover fluids (TCW) Studies;
12. The deadlines for operators to submit the Industry-wide Study Plan and the final report for well treatment, completion, and workover fluids are changed;
13. A condition which requires operators to flush and capture hydrate control fluids or pipeline brine contained in pipelines, umbilical, or

jumpers before or at the time of abandonment is removed from the final permit;

14. Fixed monitoring frequency is replaced with tier-approach monitoring frequency for intake velocity through the cooling water intake structure; and

15. An exception to allow operators to submit SEAMAP data instead of entrainment monitoring is added.

16. Monitoring exception for sanitary and domestic waste discharges using approved Marine Sanitation Devices (MSDs) from previous permit was reinstated.

#### Other Legal Requirements

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

Consideration of Other Federal or State Laws. State certification under section 401 of the CWA; consistency with the State Coastal Management Program; and compliance with National Environmental Policy Act, Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Historic Preservation Act, Paperwork Reduction Act, and Regulatory Flexibility Act are discussed in the Region's Final Permit Fact Sheet.

Dated: September 19, 2017.

**William B. Honker,**

Director, Water Division, EPA Region 6.

[FR Doc. 2017-21108 Filed 9-29-17; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-9968-39-Region 9]

##### Casmalia Resources Superfund Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA) and the

Resource Conservation and Recovery Act (RCRA), the Environmental Protection Agency (EPA) is hereby providing notice of a proposed administrative *de minimis* settlement concerning the Casmalia Resources Superfund Site in Santa Barbara County, California (the Casmalia Resources Site). CERCLA provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of the 57 settling parties identified below for the Casmalia Resources Site. These parties have also elected to resolve their liability for response costs and potential natural resource damage claims by the United States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA). These 57 parties sent 6,517,494 lbs. of waste to the Casmalia Resources Site, which represents 0.00114 (0.114%) of the total Site waste of 5.6 billion pounds. This settlement requires these parties to pay \$590,772 to EPA.

**DATES:** EPA will receive written comments relating to the settlement until November 1, 2017. EPA will consider all comments it receives during this period, and may modify or withdraw consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

**Public Meeting:** In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. The deadline for requesting a public meeting is October 16, 2017. Requests for a public meeting may be made by contacting Russell Mechem by email at [Mechem.russell@epa.gov](mailto:Mechem.russell@epa.gov). If a public meeting is requested, information about the date and time of the meeting will be published in the local newspaper, *The Santa Maria Times*, and will be sent to persons on the EPA's Casmalia Resources Site mailing list. To be added to the mailing list, please contact: Alejandro Diaz at (415)972-3242 or by email at [diaz.alejandros@epa.gov](mailto:diaz.alejandros@epa.gov).

**ADDRESSES:** Written comments should be addressed to Casmalia Case Team, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street (mail code SFD-7-1), San Francisco, California 94105-3901, or may be sent by email to [Mechem.russell@epa.gov](mailto:Mechem.russell@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** A copy of the settlement document and additional information about the Casmalia Resources Site and the proposed settlement may be obtained on the EPA-maintained Casmalia Resources

Site Web site at: <http://www.epa.gov/region09/casmalia> or by calling Russell Mechem at (415) 972-3192.

**SUPPLEMENTARY INFORMATION:** Section 122(g) of CERCLA gives EPA authority to enter into administrative *de minimis* settlements. Section 122(i) of CERCLA and section 7003 of RCRA require that EPA publish notice of a proposed administrative *de minimis* settlement. This settlement is intended to resolve the liabilities of the settling parties under sections 106 and 107 of CERCLA and section 7003 of RCRA for the Casmalia Resources Site.

The parties that have elected to settle their liability with EPA at this time are as follows: ABB Group, Inc.; Advanced Structures Corporation; Alameda County Fire Department; Alisal Guest Ranch and Golf Resort; ALSCO, Inc.; American Forest Products Co.; Angell and Giroux, Inc.; ASV Wines, Inc.; Cadet Uniform; Cambro Manufacturing; Coating Resources Corporation; Colfax Corporation; Conejo Recreation & Park District; County of Alameda; Custom Building Products, Inc.; Data Products Corporation; Denso Products and Services Americas, Inc. (on behalf of American Industrial Manufacturing Services); Electronic Precision Specialties, Inc.; Federal Cartridge Company on behalf of Omark Industries; Fuentes-Ford Enterprises; H-H Heat Treating, aka Bodycote Thermal Processing, Inc.; Hearst Corporation; Hendry Mechanical Works/Hendry Telephone Products; Holz Rubber Company, Inc.; Homer T. Hayward Lumber Co., successor-in-interest to County Lumber Company; Hubbell, Inc.; J Buchbinder Industrial; Jervis B. Webb Company, as former shareholder of Jervis B. Webb Company of California; KEC Company; Kelly Moore Paint Company, Inc.; Kem-Mil Company; Kirby Automotive; Leidos, Inc.; Liquid Carbonic Corp.; Liquid Waste Test Facility; McCann's Engineering & Mfg. Co.; Moldex-Metric, Inc.; Monterey Regional Waste Management District; Munroe & Sons Manufacturing; Nestle S.A.; Oscar E. Erickson, Inc.; PCL Construction Company; Plasticolor Molded Products; Prime Healthcare; Princeton Packaging, Inc.; Reynolds & Taylor; Richards Surgical Mfg. Co.; Roofing Wholesale Company; Sage Mitsubishi; Siemens Healthcare Diagnostics, Inc., settles on behalf of Syva Diagnostics Holding Company and entity Behring Diagnostics acquired through Dade-Behring; Specialty Extrusion Ltd.; Successor Agency to Culver City Redevelopment Agency; Tenet Healthcare; Terminal Data Corporation; Thomsen Equipment

Company, Inc.; University Financial; Western Industrial Maintenance.

Dated: September 15, 2017.

**Enrique Manzanilla,**

*Director, Superfund Division, U.S. EPA Region IX.*

[FR Doc. 2017-21123 Filed 9-29-17; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Interagency Notice of Change in Control (FR 2081A; OMB No. 7100-0134), Interagency Notice of Change in Director or Senior Executive Officer (FR 2081B; OMB No. 7100-0134), Interagency Biographical and Financial Report (FR 2081C; OMB No. 7100-0134), and the Interagency Bank Merger Act Application (FR 2070; OMB No. 7100-0171).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

**DATES:** Comments must be submitted on or before December 1, 2017.

**ADDRESSES:** You may submit comments, identified by 7100-0134 or 7100-0171, by any of the following methods:

- **Agency Web site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include OMB number in the subject line of the message.
- **FAX:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: <http://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrahi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comment on Information Collection Proposals

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;
- b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposal prior to giving final approval.

#### Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Reports

**Report title:** Interagency Notice of Change in Control.

**Agency form number:** FR 2081A.

**OMB control number:** 7100-0134.

**Frequency:** On occasion.

**Respondents:** Individual (or a group of individuals or companies that would not be bank holding companies (BHCs) or savings and loan holding companies (SLHCs) after consummation of the proposed transaction) seeking to acquire shares of an insured depository institution, SLHC, or BHC (or group of BHCs or SLHCs).

**Estimated number of respondents:**

156.

**Estimated average hours per response:**

30.5.

**Estimated annual burden hours:**

4,758.

**Report title:** Interagency Notice of Change in Director or Senior Executive Officer.

**Agency form number:** FR 2081B.

**OMB control number:** 7100-0134.

**Frequency:** On occasion.

**Respondents:** An insured depository institution, savings and loan holding company, bank holding company, or the affected individual.

**Estimated number of respondents:**

287.

**Estimated average hours per response:**

2.

**Estimated annual burden hours:** 574.

**Report title:** Interagency Biographical and Financial Report.

**Agency form number:** FR 2081C.

**OMB control number:** 7100-0134.

**Frequency:** On occasion.

**Respondents:** Certain shareholders, directors, and executive officers.

**Estimated number of respondents:**

1,512.

**Estimated average hours per response:**

4.5.

*Estimated annual burden hours:*  
6,804.

*Report title:* Interagency Bank Merger Act Application.

*Agency form number:* FR 2070.

*OMB control number:* 7100-0171.

*Frequency:* On occasion.

*Respondents:* State member banks.

*Estimated number of respondents:*  
Non-affiliate, 54; Affiliate, 10.

*Estimated average hours per response:*

Non-affiliate, 31; Affiliate, 19.

*Estimated annual burden hours:*  
1,864.

*General description of reports:* The Interagency Notice of Change in Control form is used by an individual (or a group of individuals or companies that would not be bank holding companies (BHCs) or savings and loan holding companies (SLHCs) after consummation of the proposed transaction) seeking to acquire shares of an insured depository institution, SLHC or a BHC (or group of BHCs or SLHCs). The notice is submitted to the appropriate federal regulatory agency of the target organization. The notice includes a description of the proposed transaction, the related purchase price and funding source, and the personal and financial information of the proposed acquirer(s) and any proposed new management.

The Interagency Notice of Change in Director or Senior Executive Officer form is used, under certain circumstances, by an insured depository institution, a BHC, SLHC, or the affected individual to notify one of the agencies of a proposed change in the institution's board of directors or senior executive officers. The notice of proposed change in director or senior executive officer must be filed with the institution's appropriate federal regulatory agency for prior consent if the institution is experiencing certain financial or supervisory difficulties. An insured depository institution, SLHC, or BHC is subject to this prior consent requirement if it is not in compliance with all minimum capital requirements, is in troubled condition or, otherwise, is required by the Board to provide such notice.

The Interagency Biographical and Financial Report is used by certain shareholders, directors, and executive officers, in connection with different types of applications filed with the agencies. Information requested on this reporting form is subject to verification and must be complete. As with all the notices and reporting forms, requests for clarification or supplementation of the original filing may be necessary.

The Interagency Bank Merger Act Application is an event-generated

application and is completed by an insured depository institution each time the insured depository institution requests approval to effect a merger, consolidation, assumption of deposit liabilities, other combining transaction with a nonaffiliated party, or a corporate reorganization with an affiliated party. The form collects information on the basic legal and structural aspects of these transactions.

*Proposed revisions:* The Board proposes to implement a number of revisions to the above information collections. The proposed changes are being made in order to: Improve the clarity of the requests; reflect new laws, regulations, capital requirements and accounting rules; delete information requests that are not typically useful for the analysis of the proposal; and add transparency for filers regarding the information that is required to consider a proposal. In determining which changes to propose, the agencies surveyed their regional offices to solicit recommendations for changes to the forms and considered the effects of the changes on community bank organizations, which represent the vast majority of filers. Although the revisions add items to these forms, the Board believes that some of these additions are related to information typically requested on a follow-up basis by the respective regulators. Requesting the information upfront should increase transparency for filers as well as the efficiency of the review process.

The proposed changes for the Interagency Bank Merger Act Application form include additional requested items relating to information that was previously requested as supplemental information subsequent to the filing of the initial application; clarification of certain requested items related to biographical and financial information for principals and Community Reinvestment Act-related information; deletion of the request for cash flow projections for the parent company; updated requests to account for changed capital requirements and outdated accounting rules; and other minor changes for improved grammar, comprehension, accurate citations and mailing addresses. The current annual reporting burden for the Interagency Bank Merger Act Application form is estimated to be 1,800 hours. The proposed revisions are expected to increase the estimated average hours per response by one hour for a total burden of 1,864 hours.

The proposed changes for the Interagency Notice of Change in Control form, Interagency Notice of Change in Director or Senior Executive Officer

form, and the Interagency Biographical and Financial Report include additional requested items relating to information that generally was previously requested as supplemental information subsequent to the filing of the initial application; clarification of exact requirements of certain requests; deletion of certain requested items that the agencies no longer believe are helpful in evaluating the notice; and other minor changes for improved grammar, comprehension, and accurate citations and mailing addresses.

The current annual reporting burden for these forms is estimated to be 11,302 hours. The proposed revisions are expected to increase the estimated average hours per response for the Interagency Notice of Change in Control form and the Interagency Biographical and Financial Report by one half hour. No increase in estimated average hours per response is anticipated for the Interagency Notice of Change in Director or Senior Executive Officer form. The total proposed burden for these forms collections is 12,136 hours. The proposed reporting would be effective January 1, 2018.

*Legal authorization and confidentiality:* Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) authorizes the Board to require the information under the FR 2081a and FR 2081c. Section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 1831(i)) authorizes the Board to require the information under the FR 2081b and FR 2081c.

The Federal Reserve treats the notices and reporting form as public documents. The organizations and individuals that submit the forms may request that all or a portion of the submitted information be kept confidential. In such cases, the filer must justify the exemption by demonstrating that disclosure would cause substantial competitive harm, result in an unwarranted invasion of personal privacy, or would otherwise qualify for an exemption under the Freedom of Information Act (5 U.S.C. 552). The confidentiality status of the information submitted will be judged on a case-by-case basis.

Because information is being collected from individuals, the Federal Reserve is required to make certain disclosures to the notificant under the Privacy Act (5 U.S.C. 552a(e)(3)). The disclosures made by the Federal Reserve on the current and proposed FR 2081 meet the requirements of the Privacy Act.

The Bank Merger Act requires, in relevant part, that a state member bank,

when it is the acquiring, assuming or resulting bank, obtain prior approval from the Board before merging or consolidating with another insured depository institution, or before acquiring the assets of or assuming liability to deposits made in any other insured depository institution. (12 U.S.C. 1828(c)). The Federal Reserve treats the Interagency Bank Merger Act Application as a public document. However, applicants may request that parts of their applications be kept confidential. In such cases, the filer must justify the exemption by demonstrating that disclosure would cause "substantial competitive harm," would result in "an unwarranted invasion of personal privacy," or would otherwise qualify for an exemption under the Freedom of Information Act (5 U.S.C. 552). The confidentiality status of the information submitted will be judged on a case-by-case basis.

*Consultation outside the agency:* The interagency working group responsible for these reports is comprised of representatives from the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve System, who collaborated to recommend the proposed revisions.

Board of Governors of the Federal Reserve System, September 26, 2017.

**Ann E. Mishback,**

*Secretary of the Board.*

[FR Doc. 2017-20955 Filed 9-29-17; 8:45 am]

**BILLING CODE 6210-01-P**

## GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-XXXX; Docket No. 2016-0001; Sequence 10]

### Submission for OMB Review; Permitting Notice of Initiation

**AGENCY:** Federal Permitting Improvement Steering Council (FPISC), General Services Administration (GSA).

**ACTION:** Notice of request for comments regarding a new request for an OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding OMB Control No. 3090-XXXX; Permitting Notice of Initiation. A notice was published in the **Federal Register** on August 9, 2016. No comments were received.

**DATES:** Submit comments on or before November 1, 2017.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "Information Collection 3090-XXXX; Permitting Notice of Initiation". Select the link "Submit a Comment" that corresponds with "Information Collection 3090-XXXX; Permitting Notice of Initiation". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-XXXX; Permitting Notice of Initiation" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Mr. Poe/IC 3090-XXXX, Permitting Notice of Initiation.

*Instructions:* Please submit comments only and cite Information Collection 3090-XXXX; Permitting Notice of Initiation, in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Angela Colamaria, Permitting Team Lead, at telephone 202-395-3708 or via email to [angela\\_f\\_colamaria@omb.eop.gov](mailto:angela_f_colamaria@omb.eop.gov).

### SUPPLEMENTARY INFORMATION:

#### A. Purpose

In December 2015, the Fixing America's Surface Transportation (FAST) Act outlined a set of fundamental requirements designed to change the way Federal government agencies carry out their permitting and environmental review responsibilities for major infrastructure projects. Section 41003(a)(1)(A) of the FAST Act states that a "project sponsor of a covered project shall submit to the Executive Director and the facilitating agency

notice of the initiation of a proposed covered project." The statute goes on to describe the required information to be contained in this notice of initiation.

In order to accommodate this statutory requirement, the Federal Permitting Improvement Steering Council (FPISC) has developed the Notice of Initiation form. The information collected via the Notice of Initiation form will be reviewed by the facilitating agency, as identified for the particular type of project under consideration, as well as the Executive Director of the FPISC in order to verify that the project in question qualifies to be considered a "covered project." If the project outlined in the Notice of Initiation is accepted as a covered project, the project will be added to the online Permitting Dashboard and a series of steps will be taken by the facilitating agency and the Executive Director as outlined in Title XLI of the FAST Act.

### B. Annual Reporting Burden

*Respondents:* 50.

*Responses Per Respondent:* 1.

*Total Annual Responses:* 50.

*Hours per Response:* 3.

*Total Burden Hours:* 150.

### C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202-501-4755. Please cite OMB Control No. 3090-XXXX, Permitting Notice of Initiation, in all correspondence.

Dated: September 14, 2017.

**David A. Shive,**  
*Chief Information Officer, General Services Administration.*

[FR Doc. 2017-20985 Filed 9-29-17; 8:45 am]

**BILLING CODE 6820-FM-P**

**GENERAL SERVICES  
ADMINISTRATION**

[Notice-ID-2017-01; Docket 2017-0002;  
Sequence No. 1]

**Privacy Act of 1974; System of  
Records**

**AGENCY:** Office of the Deputy Chief  
Information Officer, General Services  
Administration, (GSA).

**ACTION:** Notice of a modified system of  
records.

**SUMMARY:** GSA proposes to add two  
routine uses and make minor or  
clarifying changes to two existing  
routine uses for a system of records  
subject to the Privacy Act of 1974, as  
amended, "Office of General Counsel  
Case Tracking and eDiscovery System,"  
broadly covers the information in  
identifiable form needed for tracking,  
storing and searching materials for  
litigation and pursuant to Freedom of  
Information Act (FOIA) requests. The  
previously published notice (82 FR  
12350, March 2, 2017) is being revised  
to add two new routine uses and make  
minor or clarifying changes to two  
existing routine uses.

**DATES:** The two new routine uses and  
clarified routine use "e" are effective  
November 1, 2017. Comments on the  
two new routine uses and one clarified  
routine use for the system of records  
notice must be submitted by November  
1, 2017.

**ADDRESSES:** Submit comments  
identified by "Notice-ID-2017-01,  
Notice of Revised System of Records"  
by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments  
via the Federal eRulemaking portal by  
searching for Notice-ID-2017-01,  
Notice of Revised System of Records.  
Select the link "Comment Now" that  
corresponds with "Notice-ID-2017-01,  
Notice of Revised System of Records."  
Follow the instructions provided on the  
screen. Please include your name,  
company name (if any), and "Notice-  
ID-2017-01, Notice of Revised System  
of Records" on your attached document.

- *Mail:* General Services  
Administration, Regulatory Secretariat  
Division (MVCB), 1800 F Street NW.,  
Washington, DC 20405. ATTN: Mr. Poe/  
Notice-ID-2017-01, Notice of Revised  
System of Records.

*Instructions:* Comments received  
generally will be posted without change  
to <http://www.regulations.gov>, including  
any personal and/or business  
confidential information provided. To  
confirm receipt of your comment(s),  
please check [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), approximately  
two to three days after submission to  
verify posting (except allow 30 days for  
posting of comments submitted by  
mail).

**FOR FURTHER INFORMATION CONTACT:** Call  
or email the GSA Chief Privacy Officer:  
telephone 202-322-8246; email  
[gsa.privacyact@gsa.gov](mailto:gsa.privacyact@gsa.gov).

**SUPPLEMENTARY INFORMATION:** The new  
routine uses will enable the system to  
disclose records to other agencies  
pursuant to GSA's FOIA consultation,  
referral, and coordination process  
(routine use "j") and to the National  
Archives and Records Administration,  
Office of Government Information  
Services (OGIS) so that it may review  
agency compliance with FOIA, provide  
mediation services to resolve FOIA  
disputes, and identify policies and  
procedures for improving FOIA  
compliance (routine use "k"). In  
addition, a clarifying change is being  
made to more accurately reflect the  
meaning of existing routine use "e" but  
the scope of that routine use is not  
changing. Lastly, a minor change is  
being made to existing routine use "h"  
to reflect current Office of Management  
and Budget (OMB) guidance.

The new routine uses will permit  
disclosures pursuant to GSA's FOIA  
consultation, referral, and coordination  
process at 41 CFR 105-60.301 (routine  
use "j") and to the National Archives  
and Records Administration, Office of  
Government Information Services  
(OGIS), for all purposes set forth in 5  
U.S.C. 552(h)(2)(A-B) and (3) (new  
routine use "k"). A clarifying change is  
being made to more accurately reflect  
the meaning of existing routine use "e"  
and a minor change is being made to  
existing routine use "h" to reflect  
current Office of Management and  
Budget (OMB) guidance.

**Richard Speidel,**

*Chief Privacy Officer, Office of the Deputy  
Chief Information Officer, General Services  
Administration.*

**SYSTEM NAME AND NUMBER:**

Office of General Counsel Case  
Tracking and eDiscovery System, GSA/  
OGC-1.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

The system is maintained  
electronically in the Office of General  
Counsel, the regional counsels' offices  
and the Office of Administrative  
Services.

**SYSTEM MANAGER(S):**

Office of General Counsel Central  
Office Records Management  
Coordinator, Office of General Counsel,  
General Services Administration, 1800 F  
Street NW., Washington, DC, 20405.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

General authority to maintain the  
system is contained in 5 U.S.C. 301 and  
44 U.S.C. 3101; the Federal Property  
and Administrative Services Act of 1949  
(40 U.S.C. 501 *et seq.*); the Federal Tort  
Claims Act (28 U.S.C. 2671 *et seq.*);  
Claims (Chapter 37 of Title 31 of the  
U.S. Code).

**PURPOSE(S) OF THE SYSTEM:**

This system will track and store  
electronic information, including  
imaged and paper documents, to allow  
GSA to represent itself and its  
components in court cases and  
administrative proceedings and respond  
to FOIA requests. The system will  
provide for the collection of information  
to track and manage administrative  
matters, claims and litigation cases in  
the Office of General Counsel and for  
searches pursuant to FOIA requests  
processed by the Office of  
Administrative Services.

**CATEGORIES OF INDIVIDUALS COVERED BY THE  
SYSTEM:**

Individuals involved with  
administrative matters, claims or  
litigation with GSA. Individuals  
referenced in potential or actual cases  
and matters under the jurisdiction of the  
Office of General Counsel; and  
attorneys, paralegals, and other  
employees of the Office of General  
Counsel directly involved in these cases  
or matters.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains information  
needed for administering and properly  
managing and resolving the cases in the  
Office of General Counsel and  
responding to FOIA requests. Records in  
this system pertain to a broad variety of  
administrative matters, claims and  
litigation under the jurisdiction of the  
Office of General Counsel including, but  
not limited to, torts, contract disputes,  
and employment matters. Records may  
include but are not limited to: Name,  
social security number, home address,  
home phone number, email address,  
birth date, financial information,  
medical records, or employment  
records.

**RECORD SOURCE CATEGORIES:**

The sources for information in the  
system are data from other systems,  
information submitted by individuals or  
their representatives, information

gathered from public sources, and information from other entities involved in an administrative matter, claim or litigation.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND 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 GSA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) GSA or any component thereof, or (b) any employee of GSA in his/her official capacity, or (c) any employee of GSA in his/her individual capacity where DOJ or GSA has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and GSA determines that the records are both relevant and necessary to the litigation.

b. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

c. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) in accordance with their responsibilities for evaluating Federal programs.

d. To an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

e. To a Member of Congress or his or her staff in response to a request made on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To appropriate agencies, entities, and persons when (1) GSA suspects or has confirmed that there has been a breach of the system of records, (2) GSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, GSA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

i. To another Federal agency or Federal entity, when GSA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

j. To another Federal agency, when GSA believes that it is reasonably necessary to ascertain whether that agency is better able to determine if the records are releasable under the FOIA, in accordance with GSA's consultation, referral, and coordination process at 41 CFR 105-60.301.

k. To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Electronic records and backups are stored on secure servers approved by GSA Office of the Chief Information Security Officer (OCISO) and accessed only by authorized personnel. Paper files are stored in locked rooms or filing cabinets.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records are retrievable by a variety of fields including, without limitation, name of an individual involved in a case, email address, email heading, email subject matter, business or residential address, social security number, phone number, date of birth, contract files, litigation files or by some combination thereof.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration.

**ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:**

Access is limited to authorized individuals with passwords or keys. Electronic files are maintained behind a firewall, and paper files are stored in locked rooms or filing cabinets.

**RECORD ACCESS PROCEDURES:**

Individuals wishing to access their own records should contact the system manager at the above address. Procedures for accessing the content of a record in the Case Tracking and eDiscovery System and appeal procedures can also be found at 41 CFR Part 105-64.2.

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to contest the content of any record pertaining to him or her in the system should contact the system manager at the above address. Procedures for contesting the content of a record in the Case Tracking and eDiscovery System and appeal procedures can also be found at 41 CFR part 105-64.4.

**NOTIFICATION PROCEDURES:**

Individuals wishing to inquire if the system contains information about them should contact the system manager at the above address. Procedures for receiving notice can also be found at 41 CFR part 105-64.4.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

This notice revises the previously published notice (82 FR 12350, March 2, 2017).

[FR Doc. 2017-20972 Filed 9-29-17; 8:45 am]

**BILLING CODE 6820-34-P**

## GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0118; Docket 2017–0001; Sequence 2]

### Information Collection; Statement of Witness, Standard Form 94

**AGENCY:** Federal Vehicle Policy Division, General Services Administration (GSA).

**ACTION:** Notice of a request for comments regarding a reinstatement, with change, to an OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995, GSA has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement, with change, to an information collection requirement concerning Standard Form 94, Statement of Witness.

**DATES:** Submit comments on or before December 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Ray Wynter, Federal Vehicle Policy Division, 202–501–3802, or via email at [ray.wynter@gsa.gov](mailto:ray.wynter@gsa.gov).

**ADDRESSES:** Submit comments identified by Information Collection 3090–0118, Statement of Witness, SF 94, by any of the following methods: [Regulations.gov](http://www.regulations.gov); <http://www.regulations.gov>.

- [Regulations.gov](http://www.regulations.gov); <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link “Submit a Comment” that corresponds with “Information Collection 3090–0118, Statement of Witness, SF 94.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “Information Collection 3090–0118, Statement of Witness, SF 94” on your attached document.

- **Mail:** General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Mr. Poel/IC 3090–0118, Statement of Witness, SF 94.

**Instructions:** Please submit comments only and cite Information Collection 3090–0118, Statement of Witness, SF 94, in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after

submission to verify posting (except allow 30 days for posting of comments submitted by mail).

#### SUPPLEMENTARY INFORMATION:

##### A. Purpose

GSA is requesting that OMB review and approve information collection, 3090–0118, Statement of Witness, SF 94. This form is used by all Federal agencies to report accident information involving U.S. Government motor vehicles.

##### B. Annual Reporting Burden

*Respondents:* 874.

*Responses per Respondent:* 1.

*Total Annual Responses:* 874.

*Hours per Response:* .333.

*Total Burden Hours:* 291.

##### C. Public Comment

*Public comments are particularly invited on:* Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0118, Statement of Witness, SF 94, in all correspondence.

Dated: September 26, 2017.

**David A. Shive,**

*Chief Information Officer, General Services Administration.*

[FR Doc. 2017–20983 Filed 9–29–17; 8:45 am]

**BILLING CODE 6820–43–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), Subcommittee on Procedures Review (SPR), National Institute for Occupational Safety and Health (NIOSH)

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory

Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the Subcommittee on Procedures Review (SPR) of the Advisory Board on Radiation and Worker Health (ABRWH). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number at 1–866–659–0537; the pass code is 9933701. The conference line has 150 ports for callers.

**DATES:** The meeting will be held on November 20, 2017, 11:00 a.m. to 4:30 p.m. ET.

**ADDRESSES:** Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

**FOR FURTHER INFORMATION CONTACT:** Theodore Katz, MPA, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1(800) CDC–INFO, Email [ocas@cdc.gov](mailto:ocas@cdc.gov).

#### SUPPLEMENTARY INFORMATION:

**Background:** The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on March 22, 2016,

pursuant to Executive Order 13708, and will expire on September 30, 2017.

**Purpose:** The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. SPR was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction. SPR is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor (Oak Ridge Associated Universities—ORAU).

**Matters to be Considered:** The agenda will include discussions on the following dose reconstruction procedures: DCAS Program Evaluation Report 59 (addressing dose reconstructions at the Norton Company, Worcester MA); DCAS Report 5: Alternative Dissolution Models for Insoluble Plutonium 238; Outstanding Findings of Prior Subcommittee Reviews; and DCAS Procedures Not Yet Reviewed. Agenda items are subject to change as priorities dictate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2017-21046 Filed 9-29-17; 8:45 am]

**BILLING CODE 4163-19-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2017-D-5140]

#### Display Devices for Diagnostic Radiology; Guidance for Industry and Food and Drug Administration Staff; Availability

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

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled “Display Devices for Diagnostic Radiology.” This guidance document provides recommendations for the types of information you should provide in your premarket notification submission (510(k)) for display devices intended for diagnostic radiology with the assigned product code PGY. This guidance replaces a previously issued final guidance entitled “Display Accessories for Full-Field Digital Mammography Systems-Premarket Notification (510(k)) Submissions” issued on May 30, 2008.

**DATES:** The announcement of the guidance is published in the **Federal Register** on October 2, 2017.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA-2017-D-5140 for “Display Devices for Diagnostic Radiology” comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://>

[www.regulations.gov](http://www.regulations.gov) and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "Display Devices for Diagnostic Radiology" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

**FOR FURTHER INFORMATION CONTACT:** Robert Ochs, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4308, Silver Spring, MD 20993-0002, 301-796-6661.

#### **SUPPLEMENTARY INFORMATION:**

### **I. Background**

This guidance applies to display devices intended for diagnostic radiology as identified in Section III of the guidance and currently classified under 21 CFR 892.2050 as class II devices according to section 513(a)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(a)(1)) with the assigned product code PGY. This guidance is intended to assist industry in preparing a 510(k) for display devices intended for use in diagnostic radiology. This guidance provides recommendations for the types of information you should provide in your 510(k) submission for display devices intended for diagnostic radiology. This information supplements the requirements for a 510(k) submission found in 21 CFR 807 Subpart E, as well as recommendations provided in other FDA guidance documents concerning the specific content of a 510(k) submission.

FDA considered comments on the draft guidance that appeared in the **Federal Register** of February 9, 2016 (81 FR 6869). FDA revised the guidance as appropriate in response to the comments.

This guidance applies to workstation medical image displays for diagnostic

radiology. These devices are classified as class II devices that are intended to be used in controlled viewing conditions to display and view digital images for primary image interpretation. Display devices for diagnostic radiology may also be referred to as soft-copy displays or medical grade monitors.

### **II. Significance of Guidance**

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the current thinking of FDA on Display Devices for Diagnostic Radiology. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

### **III. Electronic Access**

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. Guidance documents are also available at <https://www.regulations.gov>. Persons unable to download an electronic copy of "Display Devices for Diagnostic Radiology" may send an email request to [CDRH-Guidance@fda.hhs.gov](mailto:CDRH-Guidance@fda.hhs.gov) to receive an electronic copy of the document. Please use the document number 1500022 to identify the guidance you are requesting.

### **IV. Paperwork Reduction Act of 1995**

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910-0120; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910-0485; and the collections of information in the guidance entitled "Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff" have been approved under OMB control number 0910-0756.

Dated: September 25, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-21078 Filed 9-29-17; 8:45 am]

**BILLING CODE 4164-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

[Docket No. FDA-2017-D-5372]

### **Marketing Clearance of Diagnostic Ultrasound Systems and Transducers; Draft Guidance for Industry and Food and Drug Administration Staff; Availability**

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

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled "Marketing Clearance of Diagnostic Ultrasound Systems and Transducers; Draft Guidance for Industry and Food and Drug Administration Staff." This draft guidance provides detailed information recommended for manufacturers seeking marketing clearance of diagnostic ultrasound systems and transducers. This draft guidance is not final nor is it in effect at this time.

**DATES:** Submit either electronic or written comments on the draft guidance by January 2, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2017-D-5372 for “Marketing Clearance of Diagnostic Ultrasound Systems and Transducers; Draft Guidance for Industry and Food and Drug Administration Staff.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For

more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled “Marketing Clearance of Diagnostic Ultrasound Systems and Transducers; Draft Guidance for Industry and Food and Drug Administration Staff” to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

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

Shahram Vaezy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4227A, Silver Spring, MD 20993-0002, 301-796-6242 or Keith Wear, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, Rm. 2104, Silver Spring, MD 20993-0002, 301-796-2538.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

When finalized, this draft guidance will provide detailed recommendations for manufacturers seeking marketing clearance of diagnostic ultrasound systems and transducers. In addition, this draft guidance, when final, is intended to supersede FDA’s 2008 guidance entitled, “Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers,” regarding FDA’s approach to the regulation of certain diagnostic ultrasound devices. (Ref. 1). In addition to the regulatory

approaches outlined in the 2008 document, additional guidance is provided for deciding when a device modification to a diagnostic ultrasound device can be made without the need for submission of a new premarket notification (510(k)) submission. As before, device sponsors who comply with the applicable premarket notification requirements will continue to be exempt from the Electronic Product Radiation Control reporting requirements in 21 CFR 1002.12, for diagnostic ultrasound devices, as described in the notice to industry entitled “Exemption from Reporting under 21 CFR 1002” (dated February 24, 1986) (Ref. 2). When finalized, this draft guidance is applicable to diagnostic ultrasound devices under 21 CFR 892.1550 (Ultrasonic pulsed doppler imaging system), 21 CFR 892.1560 (Ultrasonic pulsed echo imaging system), and 21 CFR 892.1570 (Diagnostic ultrasonic transducer).

##### **II. Significance of Guidance**

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Diagnostic Ultrasound Systems and Transducer Devices.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

##### **III. Electronic Access**

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. Guidance documents are also available at <https://www.regulations.gov>. Persons unable to download an electronic copy of “Marketing Clearance of Diagnostic Ultrasound Systems and Transducers; Draft Guidance for Industry and Food and Drug Administration Staff” may send an email request to [CDRH-Guidance@fda.hhs.gov](mailto:CDRH-Guidance@fda.hhs.gov) to receive an electronic copy of the document. Please use the document number 560 to identify the guidance you are requesting.

##### **IV. Paperwork Reduction Act of 1995**

This draft guidance refers to previously approved collections of

information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120, the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073, and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485. The collections of information in 21 CFR parts 1002 and 1010 are approved under OMB control number 0910–0025.

## V. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>. FDA has verified the Web site address, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. FDA Guidance, “Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers.” Available at: <https://www.fda.gov/downloads/UCM070911.pdf>.

2. FDA, “Information for Industry.” Available at: <https://www.fda.gov/RadiationEmittingProducts/RadiationEmittingProductsandProcedures/MedicalImaging/ucm115357.htm>

Dated: September 22, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017–21077 Filed 9–29–17; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2017–N–5776]

### Equivalence of Complex Products; Public Workshop; Request for Comments

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

**ACTION:** Notice of public workshop; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public workshop entitled “Demonstrating Equivalence of Generic Complex Drug

Substances and Formulations: Advances in Characterization and In Vitro Testing.” The purpose of the workshop is to share FDA’s current experiences on the evaluation and characterization of critical quality attributes for complex drug substances (e.g. polymeric and naturally derived substances and peptides) and formulations (e.g. liposomes, emulsions, suspensions, and polymeric inserts); discuss current and future innovative approaches for the development and regulatory review of equivalent complex drug products; obtain input from various stakeholders on how to conduct and assess critical quality attribute measurements to demonstrate equivalence of complex drug products; and request comments on these topics.

**DATES:** The public workshop will be held on October 6, 2017, from 8:30 a.m. to 4:30 p.m. Submit either electronic or written comments on this public workshop by November 10, 2017. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

**ADDRESSES:** The public workshop will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503 B+C), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to <https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm>.

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 10, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of November 10, 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–5776 for “Demonstrating Equivalence of Generic Complex Drug Substances and Formulations: Advances in Characterization and In Vitro Testing.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on

<https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

**FOR FURTHER INFORMATION CONTACT:**

Xiaohui Jiang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4716, Silver Spring, MD 20993, 240-402-4468, [Xiaohui.Jiang@fda.hhs.gov](mailto:Xiaohui.Jiang@fda.hhs.gov); or Darby Kozak, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4710, Silver Spring, MD 20993, 240-402-2647, [Darby.Kozak@fda.hhs.gov](mailto:Darby.Kozak@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In July 2012, Congress passed the Generic Drug User Fee Amendments (GDUFA) (Title III of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144)). GDUFA is designed to enhance public access to safe, high-quality generic drugs and reduce costs to industry. To support this goal, FDA agreed in the GDUFA commitment letter to work with industry and interested stakeholders on identifying regulatory science research priorities specific to generic drugs for each fiscal year covered by GDUFA. The commitment letter outlines FDA's performance goals and procedures under the GDUFA program for the years 2012 to 2017. The commitment letter can be found at <https://www.fda.gov/downloads/ForIndustry/UserFees/GenericDrugUserFees/UCM282505.pdf>.

In the Regulatory Science section of the GDUFA Commitment Letter, FDA

outlined its plans to advance regulatory science, including research to support the development of guidance and policy that clarifies the ANDA pathway for complex drug products. This regulatory science research includes but is not limited to: (1) Assessing innovative analytical methods and procedures for characterizing the active ingredient sameness and pharmaceutical equivalence of complex drug substances, such as peptides and naturally derived substances, and (2) developing and evaluating new techniques to measure the critical quality attributes of complex formulations, such as liposomes, emulsions, suspensions, and polymeric inserts, with the goal of providing robust in vitro alternatives to in vivo bioequivalence studies, and (3) developing and evaluating critical quality attributes for complex drug-device combination products. To facilitate communication of recent advances in this regulatory science, including those supported by GDUFA funds, FDA plans to hold a public workshop on new analytical methods and assessment criteria for demonstrating the equivalence of complex drug substances and formulations.

**II. Topics for Discussion at the Public Workshop**

The purposes of the workshop are to:

1. Share FDA's current experiences on the evaluation and characterization of critical quality attributes for complex drug substances (e.g. polymeric and naturally derived substances and peptides) and formulations (e.g. liposomes, emulsions, suspensions, and polymeric inserts);
2. Discuss current and future innovative approaches for the development and regulatory review of equivalent complex drug products;
3. Obtain input from various stakeholders on how to conduct and assess critical quality attribute measurements to demonstrate equivalence of complex drug products; and
4. Request comments on these topics.

The scope of the workshop covers the current status, from an academic, industry, and regulatory perspective, of methods for assessing the pharmaceutical equivalence of complex drug substances and the bioequivalence of complex generic drug product formulations.

Complex drug substances and formulations present unique development and regulatory challenges for generic drugs as establishing equivalence may not be straightforward

by conventional practices. New and innovative analytical and statistical approaches may overcome these hurdles and thereby reduce product development time and cost, and inform regulatory decisions. For example, new high resolution analytical methods and advanced statistical models can provide better understanding of the complex structure, and greater confidence of structural sameness, needed for demonstrating the pharmaceutical equivalence of a generic peptide, carbohydrate, or other naturally-sourced complex drug substance. In the same fashion, new and innovative in vitro characterization methods can provide an accurate measure of the critical quality attributes of generic liposomal, emulsion, suspension, or polymeric matrix drug products. These in vitro tests can often be used to support a demonstration of bioequivalence, in lieu of in vivo studies, depending, among other factors, on the sensitivity, robustness and/or correlation of these in vitro tests to the product performance. The focus of this public workshop is on the evaluation of new analytical and statistical methods for demonstrating equivalence of complex products, including discussing the areas in which these methods can contribute significantly, how and when the methods should be conducted and evaluated, and inherent scientific challenges.

Public input will improve FDA's current understanding of present and future methods available for evaluating complex product equivalence. The knowledge gained from, and consensus reached, through this workshop will be summarized and disseminated to the scientific community by publication(s).

FDA seeks input from the public on when, where, and how to utilize new methods for development of equivalent complex drug products and in the regulatory review of pharmaceutical equivalence and bioequivalence. Specific topics to be addressed include:

1. Identifying the areas in which new in vitro analytical and statistical methods can contribute to the development of equivalent complex products and regulatory evaluation of pharmaceutical equivalence and bioequivalence;
2. Discussing how in vitro testing for demonstrating complex product equivalence should be conducted and evaluated; and
3. Addressing the scientific challenges in assessing critical quality attributes of complex products and in developing new analytical methods for demonstrating complex product equivalence.

### III. Participating in the Public Workshop

**Registration:** Persons interested in attending this public workshop must register online at [https://survey.co1.qualtrics.com/jfe/form/SV\\_6X23XS8WXHtFWAJ](https://survey.co1.qualtrics.com/jfe/form/SV_6X23XS8WXHtFWAJ). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by October 2, 2017, midnight, Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization.

If you need special accommodations due to a disability, please contact Xiaohui Jiang (see **FOR FURTHER INFORMATION CONTACT**) no later than October 2, 2017.

**Streaming Webcast of the public workshop:** This public workshop will also be webcast. A live webcast of this workshop will be viewable at <https://collaboration.fda.gov/complex/genericdrugs/> on the day of the workshop.

If you have never attended a Connect Pro event before, test your connection at [https://collaboration.fda.gov/common/help/en/support/meeting\\_test.htm](https://collaboration.fda.gov/common/help/en/support/meeting_test.htm). To get a quick overview of the Connect Pro program, visit [https://www.adobe.com/go/connectpro\\_overview](https://www.adobe.com/go/connectpro_overview). FDA has verified the Web site addresses in this document, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

**Transcripts:** Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at <https://www.regulations.gov>. It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the Internet at <https://www.fda.gov/drugs/newsevents/ucm552461.htm>.

Dated: September 26, 2017.

**Anna K. Abram,**

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

[FR Doc. 2017-21018 Filed 9-29-17; 8:45 am]

**BILLING CODE 4164-01-P**

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Food and Drug Administration

[Docket No. FDA-2017-N-2837]

#### Electronic Study Data Submission; Data Standards; Support for Analysis Data Model Implementation Guide Version 1.1

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) Center for Drug Evaluation and Research (CDER) is announcing support for version 1.1 of Clinical Data Interchange Standards Consortium (CDISC), Analysis Data Model Implementation Guide (ADaM IG V1.1), an update to the FDA Data Standards Catalog (Catalog). (See <http://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm>). ADaM IG V1.1 has been available from CDISC ([www.cdisc.org](http://www.cdisc.org)) since February 12, 2016. FDA is encouraging sponsors and applicants to use ADaM IG V1.1 in investigational study data provided in regulatory submissions to CDER.

**DATES:** Submit either electronic or written comments at any time.

**ADDRESSES:** You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** 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-2837 for "Electronic Study Data Submission; Data Standards; Support for Analysis Data Model Implementation Guide Version 1.1." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

**Docket:** For access to the docket to read background documents or the

electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Ron Fitzmartin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1115, Silver Spring, MD 20993-0002, 301-796-5333, email: [CDERDataStandards@fda.hhs.gov](mailto:CDERDataStandards@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 17, 2014, FDA published final guidance for industry "Providing Regulatory Submissions in Electronic Format—Standardized Study Data" (eStudy Data) posted on FDA's Study Data Standards Resources Web page at <http://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm>. The eStudy Data guidance implements the electronic submission requirements of section 745A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379k-1(a)) for study data contained in new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologics license applications (BLAs), and investigational new drug applications (INDs) to the Center for Biologics Evaluation and Research (CBER) or CDER by specifying the format for electronic submissions. The implementation of electronic submission requirements for study data became effective on December 17, 2016 (24 months after issuance of final guidance for NDAs, BLAs, ANDAs, and 36 months for INDs). The eStudy Data guidance states that a **Federal Register** notice will specify the transition date for all version updates (with the month and day for the transition date corresponding to March 15).

The transition date for support of version 1.1 of ADaM IG V 1.1 is March 15, 2018. ADaM IG V.1.1 is supported as of this **Federal Register** notice and sponsors or applicants are encouraged to begin using it, the new version will only be required in submissions for studies that start after March 15, 2019. The Catalog will list March 15, 2019, which will be reflected in the Catalog, as the "date requirement begins." When multiple versions of an FDA-supported standard are listed in the Catalog, sponsors or applicants can select any of those version to use.

The transition date for the end of FDA support for ADaM IG V 1.0, is March 15, 2018.

##### II. Electronic Access

Persons with access to the Internet may obtain the referenced material at <http://www.fda.gov/ectd>.

Dated: September 22, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017-21081 Filed 9-29-17; 8:45 am]

**BILLING CODE 4164-01-P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Food and Drug Administration

[Docket No. FDA-2017-N-0007]

##### Fee for Using a Material Threat Medical Countermeasure Priority Review Voucher in Fiscal Year 2018

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is announcing the fee rate for using a material threat medical countermeasure (MCM) priority review voucher for fiscal year (FY) 2018. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the 21st Century Cures Act (Cures Act), authorizes FDA to determine and collect material threat MCM priority review user fees for certain applications for review of human drug products when those applications use a material threat MCM priority review voucher. These vouchers are awarded to the sponsors of material threat MCM applications that meet all of the requirements of this program upon FDA approval of such applications. The amount of the fee for using a material threat MCM priority review voucher is determined each FY based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous FY, and the average cost incurred in the review of an application that is not subject to priority review in the previous FY. This notice establishes the material threat MCM priority review fee rate for FY 2018 and outlines the payment procedures for such fees.

##### FOR FURTHER INFORMATION CONTACT:

Robert J. Marcarelli, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE-14202F, Silver Spring, MD 20993-0002, 301-796-7223.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 3086 of the Cures Act (Pub. L. 114-255) added section 565A to the FD&C Act (21 U.S.C. 360bbb-4a). In section 565A of the FD&C Act, Congress encouraged development of material threat MCMs by offering additional incentives for obtaining FDA approval of such products. Under section 565A of the FD&C Act, the sponsor of an eligible material threat MCM application (as defined in section 565A(a)(4)) shall receive a priority review voucher upon approval of the material threat MCM application. The recipient of a material threat MCM priority review voucher may either use the voucher for a future human drug application submitted to FDA under section 505(b)(1) of the FD&C Act (21 U.S.C. 355(b)(1)) or section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), or transfer (including by sale) the voucher to another party. The voucher may be transferred (including by sale) repeatedly until it ultimately is used for a human drug application submitted to FDA under section 505(b)(1) of the FD&C Act or section 351(a) of the Public Health Service Act. A priority review is a review conducted with a Prescription Drug User Fee Act (PDUFA) goal date of 6 months after the receipt or filing date, depending on the type of application. Information regarding PDUFA goals is available at <https://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm511438.pdf>.

The applicant that uses a material threat MCM priority review voucher is entitled to a priority review of its eligible human drug application, but must pay FDA a material threat MCM priority review user fee in addition to any user fee required by PDUFA for the application. Information regarding the material threat MCM priority review voucher program is available at: <https://www.fda.gov/EmergencyPreparedness/Counterterrorism/MedicalCountermeasures/MCMLegalRegulatoryandPolicyFramework/ucm566498.htm#prv>.

This notice establishes the material threat MCM priority review fee rate for FY 2018 at \$2,830,579 and outlines FDA's procedures for payment of material threat MCM priority review user fees. This rate is effective on October 1, 2017, and will remain in effect through September 30, 2018.

**II. Material Threat Medical Countermeasure Priority Review User Fee for FY 2018**

FDA interprets section 565A(c)(2) of the FD&C Act as requiring that FDA determine the amount of the material threat MCM priority review user fee each fiscal year based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year, and the average cost incurred by FDA in the review of a human drug application that is not subject to priority review in the previous fiscal year.

A priority review is a review conducted with a PDUFA goal date of 6 months after the receipt or filing date, depending on the type of application. Under the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of the applications granted priority review status within this expedited timeframe. Normally, an application for a human drug product will qualify for priority review if the product is intended to treat a serious condition and, if approved, would provide a significant improvement in safety or effectiveness. An application that does not receive a priority designation will receive a standard review. Under the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of standard applications within 10 months of the receipt or filing date, depending on the type of application. A priority review involves a more intensive level of effort and a higher level of resources than a standard review.

As interpreted by FDA, section 565A of the FD&C Act requires that the fee amount should be based on the difference between the average cost incurred by the Agency in the review of a human drug application subject to a priority review in the previous fiscal year, and the average cost incurred by the Agency in the review of a human drug application not subject to a priority

review in the previous fiscal year. FDA is setting a fee for FY 2018, which is to be based on standard cost data from the previous fiscal year, FY 2017. However, the FY 2017 submission cohort has not been closed out yet, thus the cost data for FY 2017 are not complete. The latest year for which FDA has complete cost data is FY 2016. Furthermore, because FDA has never tracked the cost of reviewing applications that get priority review as a separate cost subset, FDA estimated this cost based on other data that the Agency has tracked. FDA uses data that the Agency estimates and publishes on its Web site each year—standard costs for review. FDA does not publish a standard cost for “the review of a human drug application subject to priority review in the previous fiscal year.” However, we expect all such applications would contain clinical data. The standard cost application categories with clinical data that FDA publishes each year are: (1) New drug applications (NDAs) for a new molecular entity (NME) with clinical data and (2) biologics license applications (BLAs).

The standard cost worksheets for FY 2016 show standard costs (rounded to the nearest hundred dollars) of \$5,929,100 for an NME NDA, and \$4,887,100 for a BLA. Based on these standard costs, the total cost to review the 49 applications in these two categories in FY 2016 (27 NME NDAs with clinical data and 22 BLAs) was \$267,601,900. (**NOTE:** These numbers exclude the President’s Emergency Plan for AIDS Relief NDAs; no investigational new drug review costs are included in this amount.) Twenty-three of these applications (14 NDAs and 9 BLAs) received priority review, which would mean that the remaining 26 received standard reviews. Because a priority review compresses a review schedule that ordinarily takes 10 months into 6 months, FDA estimates that a multiplier of 1.67 (10 months divided by 6 months) should be applied to non-priority review costs in

estimating the effort and cost of a priority review as compared to a standard review. This multiplier is consistent with published research on this subject that supports a priority review multiplier in the range of 1.48 to 2.35 (Ref. 1). Using FY 2016 figures, the costs of a priority and standard review are estimated using the following formula:

$$(23 \alpha \times 1.67) + (26 \alpha) = \$267,601,900$$

Where “ $\alpha$ ” is the cost of a standard review and “ $\alpha$  times 1.67” is the cost of a priority review.

Using this formula, the cost of a standard review for NME NDAs and BLAs is calculated to be \$4,154,664 (rounded to the nearest dollar) and the cost of a priority review for NME NDAs and BLAs is 1.67 times that amount, or \$6,938,289 (rounded to the nearest dollar). The difference between these two cost estimates, or \$2,783,625, represents the incremental cost of conducting a priority review rather than a standard review.

For the FY 2018 fee, FDA will need to adjust the FY 2016 incremental cost by the average amount by which FDA’s average costs increased in the 3 years prior to FY 2017, to adjust the FY 2016 amount for cost increases in FY 2017. That adjustment, published in the **Federal Register** on September 14, 2017 (see 82 FR 43244 at 43245), setting FY 2018 PDUFA fees, is 1.6868 percent for the most recent year, not compounded. Increasing the FY 2016 incremental priority review cost of \$2,783,625 by 1.6868 percent (or 0.016868) results in an estimated cost of \$2,830,579 (rounded to the nearest dollar). This is the material threat MCM priority review user fee amount for FY 2018 that must be submitted with a priority review voucher for a human drug application in FY 2018, in addition to any PDUFA fee that is required for such an application.

**III. Fee Schedule for FY 2018**

The fee rate for FY 2018 is set out in table 1:

TABLE 1—MATERIAL THREAT MEDICAL COUNTERMEASURE PRIORITY REVIEW SCHEDULE FOR FY 2018

| Fee category                                                                                                       | Fee rate for FY 2018 |
|--------------------------------------------------------------------------------------------------------------------|----------------------|
| Application submitted with a material threat MCM priority review voucher in addition to the normal PDUFA fee ..... | \$2,830,579          |

**IV. Implementation of Material Threat Medical Countermeasure Priority Review User Fee**

Under section 565A(c)(4)(A) of the FD&C Act, the priority review user fee is due upon submission of a human

drug application for which the priority review voucher is used. Section 565A(c)(4)(B) of the FD&C Act specifies that the application will be considered incomplete if the priority review user fee and all other applicable user fees are not paid in accordance with FDA

payment procedures. In addition, section 565A(c)(4)(C) specifies that FDA may not grant a waiver, exemption, reduction, or refund of any fees due and payable under this section of the FD&C Act. FDA’s appropriation for FY 2018, states specifically that “medical

countermeasure priority review voucher user fees authorized by 21 U.S.C. 360bbb–4a, shall be credited to this account, to remain available until expended.” (Pub. L. 115–31, Division A, Title VI).

The material threat MCM priority review fee established in the new fee schedule must be paid for any application that is received on or after October 1, 2017, and submitted with a priority review voucher. This fee must be paid in addition to any other fee due under PDUFA. Payment must be made in U.S. currency by electronic check, check, bank draft, wire transfer, credit card, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck). Secure electronic payments can be submitted using the User Fees Payment Portal at <https://userfees.fda.gov/pay>. (NOTE: only full payments are accepted. No partial payments can be made online.) Once you search for your invoice, select “Pay Now” to be redirected to *Pay.gov*. Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than \$25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov*, a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA Web site after the user fee ID number is generated.

If paying with a paper check the user fee identification (ID) number should be included on the check, followed by the words “Material Threat Medical Countermeasure Priority Review.” All paper checks must be in U.S. currency from a U.S. bank made payable and mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (NOTE: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery). The FDA post office box number (P.O. Box 979107) must be written on the check. If needed, FDA’s

tax identification number is 53–0196965.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. The account information is as follows: U.S. Dept. of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Number: 75060099, Routing Number: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., 14th Floor, Silver Spring, MD 20993–0002.

#### V. Reference

The following reference is on display in the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Ridley, D.B., H.G. Grabowski, and J.L. Moe, “Developing Drugs for Developing Countries,” *Health Affairs*, vol. 25, no. 2, pp. 313–324, 2006.

Dated: September 28, 2017.

**Anna K. Abram,**

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

[FR Doc. 2017–21191 Filed 9–29–17; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2014–D–2245]

#### **Classification and Requirements for Laser Illuminated Projectors (Laser Notice No. 57); Draft Guidance for Industry and Food and Drug Administration Staff; Availability**

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

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled “Classification and Requirements for Laser Illuminated Projectors (LIPs) (Laser Notice No. 57); Draft Guidance for Industry and Food and Drug Administration Staff.” When finalized, this guidance describes FDA’s policy with respect to certain LIPs that comply with International Electrotechnical Commission (IEC) standards during laser product classification under the Electronic

Product Radiation Control provisions of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) that apply to electronic products. When finalized, this document will supersede the “Immediately in Effect Guidance Document: Classification and Requirements for Laser Illuminated Projectors (LIPs); Guidance for Industry and Food and Drug Administration Staff,” issued February 18, 2015. This draft guidance is not final nor is it in effect at this time.

**DATES:** Submit either electronic or written comments on the draft guidance by December 1, 2017 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

#### *Electronic Submissions*

Submit electronic submissions as follows:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA–2014–D–2245 for “Classification and Requirements for Laser Illuminated Projectors (LIPs) (Laser Notice No. 57); Draft Guidance for Industry and Food and Drug Administration Staff.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the

**SUPPLEMENTARY INFORMATION** section for

information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled “Classification and Requirements for Laser Illuminated Projectors (LIPs) (Laser Notice No. 57); Draft Guidance for Industry and Food and Drug Administration Staff” to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

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

Patrick Hintz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4228, Silver Spring, MD 20993–0002, 301–796–6927.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

When finalized, this guidance describes FDA’s policy with respect to certain laser illuminated projectors that comply with IEC standards during laser product classification under the Electronic Product Radiation Control provisions of the FD&C Act (Pub. L. 90–602, amended by Pub. L. 103–80) that apply to electronic products.

For purposes of this guidance, the term “laser illuminated projector” (LIP) refers to a type of demonstration laser product regulated under 21 CFR 1040.10(b)(13) that is designed to project full-frame digital images. LIPs may be used in locations such as indoor or outdoor cinema theaters, laser shows, presentations at conventions, as image/data projectors in an office setting, or in a home.

Under 21 CFR 1040.10(c), FDA recognizes four major hazard classes (I to IV) of lasers, including three subclasses (IIa, IIIa, and IIIb). Under this classification procedure higher laser classes correspond to more powerful lasers and a higher potential to pose serious danger if used improperly.

As demonstration laser products, LIPs and applications for LIPs cannot exceed Class IIIa emission limits as specified in 21 CFR 1040.11(c) (which is comparable to IEC 60825–1 Ed. 2.0 Class 3R) unless granted a variance by FDA under 21 CFR 1010.4. Some LIPs and applications for LIPs will exceed the Class IIIa limits and, therefore, require a variance to exceed those emission limits.

This guidance document describes FDA’s intent to clarify the application of certain aspects of the performance standard requirements in 21 CFR

1040.11(c) for LIPs. Because the radiant emission levels produced by LIPs can be scientifically characterized by an alternative IEC standard, IEC 62471–5:2015, FDA does not intend to consider whether LIP manufacturers that conform to these standards under the situations outlined in sections III and IV of this guidance also comply with 21 CFR 1040.10(c)(1) and 21 CFR 1040.11(c). For LIP manufacturers who choose not to conform to these standards under the situations outlined in sections III and IV of this guidance, such manufacturers should evaluate these laser products in accordance with FDA’s guidance entitled “Laser Products—Conformance with IEC 60825–1 and IEC 60601–2–22 (Laser Notice No. 50); Guidance for Industry and FDA Staff” (<https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm094361.htm>) or must continue to comply with 21 CFR 1040.10(c) and 21 CFR 1040.11(c), among other applicable requirements.

##### **II. Significance of Guidance**

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on classification and requirements for laser illuminated projectors. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

##### **III. Electronic Access**

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. Guidance documents are also available at <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm> or <https://www.regulations.gov>. Persons unable to download an electronic copy of “Classification and Requirements for Laser Illuminated Projectors (Laser Notice No. 57); Draft Guidance for Industry and Food and Drug Administration Staff” may send an email request to [CDRH-Guidance@fda.hhs.gov](mailto:CDRH-Guidance@fda.hhs.gov) to receive an electronic copy of the document. Please use the document number 1400056 to identify the guidance you are requesting.

**IV. Paperwork Reduction Act of 1995**

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 1002, 1010, and 1040 are approved under OMB control number 0910–0025.

Dated: September 22, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017–21079 Filed 9–29–17; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**
**Food and Drug Administration**

[Docket No. FDA–2017–N–5442]

**Leveraging Quantitative Methods and  
Modeling To Modernize Generic Drug  
Development and Review; Public  
Workshop; Request for Comments**

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

**ACTION:** Notice of public workshop; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public workshop entitled “Leveraging Quantitative Methods and Modeling to Modernize Generic Drug Development and Review.” The purpose of the public workshop is to engage stakeholders in a discussion of current and emerging scientific approaches and applications for the conduct of quantitative modeling and simulations in generic drug development, especially for complex and locally acting products, and to gain input regarding opportunities and knowledge gaps related to the use of quantitative modeling and simulation to inform regulatory decision making through the product lifecycle. FDA will use the information gained through the workshop to support product-specific guidance development, improve pre-abbreviated new drug applications (ANDA) interactions with applicants, increase the quality and efficiency of regulatory reviews, and identify a next generation modeling and simulation toolset for complex and locally acting products.

**DATES:** The public workshop will be held on October 2 and 3, 2017, from 8:30 a.m. to 4:30 p.m. Submit either electronic or written comments on this

public workshop by November 3, 2017. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

**ADDRESSES:** The public workshop will be held at FDA’s White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Great Room, Silver Spring, MD 20993. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to <https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm>.

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 3, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of November 3, 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–5442 for “Leveraging Quantitative Methods and Modeling to Modernize Generic Drug Development and Review.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the

“Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Lanyan (Lucy) Fang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4686, Silver Spring, MD 20993, 301–796–5005, email: [Lanyan.fang@fda.hhs.gov](mailto:Lanyan.fang@fda.hhs.gov); or Liang Zhao, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4702, Silver Spring, MD 20993, 240–402–4468, email: [Liang.zhao@fda.hhs.gov](mailto:Liang.zhao@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

To enhance dialogue regarding modeling and simulation and communication of recent advances in modeling and simulation, including those supported by the Generic Drug User Fee Amendments regulatory science research program, FDA plans to hold a public workshop to (1) engage stakeholders in a discussion of current and emerging scientific approaches and applications for the conduct of quantitative modeling and simulations in generic drug development, especially for complex and locally acting products, and (2) gain input regarding opportunities and knowledge gaps related to the use of quantitative modeling and simulation to inform regulatory decision making through the product lifecycle.

Modeling and simulation has been increasingly used in drug development, providing a framework for synthesizing information and extrapolating beyond what has been studied. Model-informed drug development (MIDD) approaches can be applied to brand drug products approved pursuant to a new drug application (NDA), and generic drug products approved pursuant to an ANDA. MIDD holds particular promise in key opportunity areas including pharmacokinetic/pharmacodynamics (PK/PD) models, physiologically based pharmacokinetic (PBPK) or absorption models, systems pharmacology, quantitative risk modeling, and emergent machine learning tools. These application areas can leverage the large pharmaceutical data sets (big data) available to FDA and other organizations. Quantitative approaches have been used to address significant scientific and regulatory issues in all phases of the product lifecycle: from pre-investigational new drug applications through NDAs, ANDAs, and post-approval evaluation of new

and generic drugs. Given the broad applications of modeling and simulation through the entire lifecycle of a product, there is a need to identify best practices to improve the routine use and acceptance of modeling and simulation for regulatory decision making.

The purposes of the workshop are to:

- (1) Engage global stakeholders and share experience and vision on using quantitative approaches in regulatory decision making for generic drug development and product lifecycle management;
- (2) Identify and prioritize potential areas for global harmonization for tools to inform regulatory decision making;
- (3) Share the current state of knowledge and practice in utilizing quantitative methods and modeling for generic drug development and review by case demonstrations and by integrating experience and lessons learned from new drug product development and reviews;
- (4) Identify opportunities for complex and locally acting product development and discuss approaches and principles in using quantitative methods and modeling to aid product-specific guidance development, pre-ANDA interactions between FDA and prospective applicants, ANDA reviews, and postmarket performance monitoring; and
- (5) Discuss next generation quantitative method and modeling toolsets, future directions, and application areas beyond currently available tools.

There is a paradigm shift to a risk-based product-specific regulatory approach for generic drugs. Examples of this transition include recommendations for partial AUC (area under the concentration-time curve) for some modified release drugs and replicate study bioequivalence (BE) recommendations for narrow therapeutic index (NTI) drugs. These product-specific guidances are driven by the therapeutic significance of either the exposure-response relationships for safety and efficacy (NTI drugs) or the difference in the shape of PK profiles. Modeling and simulation toolsets direct the design and evaluation of PK or comparative clinical endpoint BE studies, help evaluate clinical endpoint sensitivity and feasibility, and enable the assessment of alternative BE approaches. Overall, quantitative methods and modeling support better and faster decisions during the generic drug development and review process because they integrate knowledge accumulated during and after new drug product development, including in vitro in vivo correlation for formulation

design, absorption, distribution, metabolism, and excretion properties, population PK, and exposure-response relationships for efficacy and safety.

There is also a growing recognition that analysis of large datasets helps organizations and individuals make better decisions. Emerging methodologies that enable the Agency to take advantage of big data will impact how generic drugs are developed, reviewed, and monitored. Knowledge extracted from large datasets can provide FDA the opportunity to improve the focus of regulatory review, modernize BE assessment criteria, and efficiently manage workload by predicting future ANDA applications. Further, such knowledge will support industry's efforts to optimize their generic drug portfolios to meet upcoming patient and market needs. The public workshop will focus on the use and advance of quantitative methods and modeling in modernizing generic drug development, regulatory review, and product lifecycle management.

**II. Scope of Public Input Requested**

FDA seeks input on a range of topics related to the conduct of modeling and simulation by pharmaceutical industries and by FDA and on the interpretation and use of simulations for risk-based regulatory assessment. They include:

- (1) Opportunity areas for model-informed generic drug development and review
- (2) Risk-based BE standard for complex and locally acting products:
  - a. Under what circumstances would alternative approaches to the product-specific BE guidances be encouraged?
  - b. What can serve as evidentiary data when proposing alternative BE approaches?
  - c. What are the scientific and regulatory challenges in using a model-based BE approach?
- (3) Emerging quantitative methods and modeling in assisting regulatory decision making for drug development and product life cycle management:
  - a. What are the areas (e.g., excipient selection, molecular target/mechanism of action-safety profile association, universal exposure response models for drugs with the same target) that can benefit most in the big data era and what will be the regulatory impact and implications?
  - b. What are the potential new methods, including but not limited to, machine learning and their application areas in assisting drug development and review?
- (4) Post-approval evaluation of the substitutability of generic products for

the corresponding reference listed drugs or reference standards:

a. How to effectively integrate systems pharmacology, PBPK, and the exposure-clinical response relationship to evaluate product risk and assist BE evaluation?

b. What will be the next generation methodologies in postmarket signal detection to evaluate product substitution or compare product performance using the Sentinel database or complementary toolsets?

### III. Participating in the Public Workshop

*Registration: Persons interested in attending this public workshop must register online at [https://survey.co1.qualtrics.com/jfe/form/SV\\_3eiJOCsnrPdTZU9](https://survey.co1.qualtrics.com/jfe/form/SV_3eiJOCsnrPdTZU9). Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.*

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by September 25, 2017, midnight, Eastern Standard Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization.

If you need special accommodations due to a disability, please contact Lanyan (Lucy) Fang (see **FOR FURTHER INFORMATION CONTACT**) no later than 7 days before the workshop.

#### *Requests for Oral Presentations:*

During online registration you may indicate if you wish to present during a public comment session, and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation, or to submit requests for designated representatives to participate in the focused sessions. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by September 27, 2017. All requests to make oral presentations must be received by the close of registration on September 25, 2017. If selected for presentation, any presentation materials must be emailed to Lanyan (Lucy) Fang (see **FOR FURTHER INFORMATION CONTACT**) no later than September 28, 2017. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

*Streaming Webcast of the Public Workshop:* This public workshop will also be webcast. A live webcast of this workshop will be viewable at <https://collaboration.fda.gov/dqmm1017> on the day of the workshop.

If you have never attended a Connect Pro event before, test your connection at [https://collaboration.fda.gov/common/help/en/support/meeting\\_test.htm](https://collaboration.fda.gov/common/help/en/support/meeting_test.htm). To get a quick overview of the Connect Pro program, visit [https://www.adobe.com/go/connectpro\\_overview](https://www.adobe.com/go/connectpro_overview). FDA has verified the Web site addresses in this document, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

*Transcripts:* Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at <https://www.regulations.gov>. It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at <http://www.fda.gov/Drugs/NewsEvents/ucm554182.htm>.

Dated: September 26, 2017.

**Anna K. Abram,**

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

[FR Doc. 2017-21017 Filed 9-29-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### **Prospective Modification of Exclusive Patent License Potent and Selective Analogues of: Monamine Transporters; Methods of Making; and Uses Thereof**

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Drug Abuse, an institute of the National Institutes of Health, Department of Health and Human Services is contemplating the modification of grant of an Exclusive Patent License to EncepHeal Therapeutics, Inc., located in Winston-Salem, North Carolina, to practice the inventions embodied in the patent applications listed in the Supplementary Information section of this notice.

**DATES:** Only written comments and/or applications for a license which are received by the National Institute on Drug Abuse's Technology Transfer Office on or before October 17, 2017 will be considered.

**ADDRESSES:** Requests for copies of the patent application, inquiries, and comments relating to the contemplated modification of the Exclusive Patent License should be directed to Martha Lubet, Ph.D., Technology Transfer Manager, NCI TTC, 9609 Medical Center Drive, Room IE350, MSC 9702, Rockville, MD 20850. Telephone: 240 276-5508. Facsimile: 240 276-5505. Email: [lubetm@mail.nih.gov](mailto:lubetm@mail.nih.gov).

**SUPPLEMENTARY INFORMATION:** The following represents the intellectual property to be licensed under the prospective agreement:

U.S. provisional application 61/774,878, filed March 8, 2013 entitled "Potent and Selective Inhibitors of Monamine Transporters; Methods of Making; and Uses Thereof" [HHS Ref. No. E-073-2013/0-US-01];

PCT application PCT/US2014/021514, filed March 7, 2014 entitled "Potent and Selective Analogues of: Monamine Transporters; Methods of Making; and Uses Thereof" [HHS Ref. No. E-073-2013/0-PCT-02];

U.S. application 14/772,486, filed September 3, 2015 entitled "Potent and Selective Analogues of Monamine Transporters; Methods of Making; and Uses Thereof" [HHS Ref. No. E-073-2013/0-US-06];

EPO application 14714043.8, filed September 1, 2015 entitled "Potent and Selective Analogues of Monamine Transporters; Methods of Making; and Uses Thereof" [HHS Ref. No. E-073-2013/0-EP-05];

Australian application 2014225550, filed September 8, 2015 entitled "Potent and Selective Analogues of Monamine Transporters; Methods of Making; and Uses Thereof" [HHS Ref. No. E-073-2013/0-AU-03];

Australian application 2017202849, filed April 28, 2017 entitled "Potent and Selective Analogues of Monamine Transporters; Methods of Making; and Uses Thereof" [HHS Ref. No. E-073-2013/0-AU-07];

Canadian application 2903746, filed September 2, 2015 entitled "Potent and Selective Analogues of Monamine Transporters; Methods of Making; and Uses Thereof" [HHS Ref. No. E-073-2013/0-CA-04];

The patent rights to these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The Government previously announced its intention to grant an exclusive license to EncepHeal at FR 80:245 (December 22, 2015), pp. 79595-79596.

The Notice of Intent to Grant (NOITG) specified a Field of Use as "Use of

analogues of monamine transporters to treat substance use disorders and sleep disorders within the scope of the Licensed Patent Rights". Comments/Objections were not received in response to the NOITG. After consideration, an exclusive license was granted to EncepHeal with a Licensed Field of Use of: "Use of analogues of monamine transporters to treat substance use disorders within the scope of the Licensed Patent Rights". This Notice advises the public that the NIH intends to modify the Licensed Field of Use originally granted to EncepHeal. Specifically, the National Institute on Drug Abuse is proposing to modify the Licensed Field of Use to be "use of a lead compound to treat one or more of the following: Substance use disorders, cognitive deficits, sleep disorders, attention deficit hyperactivity disorder and depressive disorders. The modification to the Licensed Field of Use in the Exclusive Patent License requires EncepHeal to select a lead compound for each of the disorders listed in the Field of Use and that upon selection of a lead compound for a disorder, the other compounds of the technology will become available for licensing to other companies.

The technology is directed to novel analogues of modafinil. Modafinil (marketed as Provil in United States) is approved by FDA to treat narcolepsy and other sleep disorders. Modafinil has been studied as a possible treatment for cognitive dysfunction in disorders such as attention-deficit hyperactivity disorders (ADHD) as well as cocaine and methamphetamine addiction. However, it has a relatively low affinity for dopamine transporter (DAT) and is water-insoluble, thus requiring large doses to achieve pharmacological effects. Early studies indicated that modafinil reduced cocaine intake more effectively than placebo; however, subsequent larger studies reported only modest effectiveness in reducing cocaine intake. The library of compounds in the technology are analogs of modafinil and are designed to have higher affinities for DAT and improved water solubility. The National Institute on Drug Abuse has conducted preliminary experiments on many of the compounds and has identified several compounds that have higher affinities than modafinil for the DAT and lower affinity than modafinil for several other off target receptors. Preliminary studies at the National Institute on Drug Abuse indicate that some of the compounds have *in vivo* activity in rodents to inhibit cocaine taking behavior and are not selectively self-administered

themselves (*i.e.* have low abuse liability).

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404 and incorporates by reference: "Prospective Grant of Exclusive Option License: Potent and Selective Analogues of: Monamine Transporters; Methods of Making; and Uses Thereof" FR 80:245 (December 22, 2015), pp. 79595–79596. The prospective modification of the Exclusive Patent License will be royalty bearing and may be granted unless within fifteen (15) days from date of this published notice, the National Institute on Drug Abuse receives written evidence and argument that establishes that the grant of modification to the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated modification to Exclusive Patent License. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 22, 2107.

**Richard U. Rodriguez,**

*Associate Director, Technology Transfer Center, National Cancer Institute.*

[FR Doc. 2017–21048 Filed 9–29–17; 8:45 am]

**BILLING CODE 4040–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; 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 of Neurological Disorders and Stroke Special Emphasis Panel; Program Project Grant P01.

*Date:* October 23, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Teleconference Meeting).

*Contact Person:* Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, [ana.olariu@nih.gov](mailto:ana.olariu@nih.gov).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders A.

*Date:* October 23–24, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

*Contact Person:* Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 402–0288, [natalia.strunnikova@nih.gov](mailto:natalia.strunnikova@nih.gov).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; K99/R00 Review.

*Date:* October 23, 2017.

*Time:* 11:30 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Elizabeth A. Webber, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–1917, [webbere@mail.nih.gov](mailto:webbere@mail.nih.gov).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders B.

*Date:* October 26–27, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

*Contact Person:* Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, [neuhuber@ninds.nih.gov@nih.gov](mailto:neuhuber@ninds.nih.gov@nih.gov).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Ruth L. Kirschstein National Research Service Award (NRSA) Institutional Research Training Grant (T32) Program.

*Date:* October 30–31, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Monaco, 700 F Street NW., Washington, DC 20001.

*Contact Person:* William Benzinger, Ph.D., Scientific Review Officer, Scientific Review

Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892-9529, (301) 496-0660, [benzingw@mail.nih.gov](mailto:benzingw@mail.nih.gov).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BPN Review Meeting.

*Date:* November 3, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Glover Park Hotel, 2505 Wisconsin Avenue NW., Washington, DC 20007.

*Contact Person:* Joel Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892-9529, (301) 496-9223, [joel.saydoff@nih.gov](mailto:joel.saydoff@nih.gov).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders K.

*Date:* November 6, 2017.

*Time:* 2:00 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892-9529, (301) 435-6033, [rajarams@mail.nih.gov](mailto:rajarams@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 26, 2017.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-20991 Filed 9-29-17; 8:45 am]

**BILLING CODE 4140-01-P**

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee.

*Date:* October 24, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott, 5701 Marinelli Road, Rockville, MD 20852.

*Contact Person:* Kathy Salaita, SCD, Chief, Scientific Review Branch, National Institute of Arthritis and Musculoskeletal and Skin Diseases, DHHS/National Institutes of Health, 6701 Democracy Blvd., Rm. 818, Bethesda, MD 20892, 301-594-5033 (office), 301-402-2406 (fax), [Kathy.Salaita@nih.gov](mailto:Kathy.Salaita@nih.gov).

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; AMSC Conflict Review Meeting.

*Date:* October 26, 2017.

*Time:* 11:00 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Suite 816, Bethesda, MD 20892 (Teleconference).

*Contact Person:* Nakia C. Brown, Ph.D., Scientific Review Officer, 6701 Democracy Boulevard, Room 816, Bethesda, MD 20892, 301-827-4905, [brownnac@mail.nih.gov](mailto:brownnac@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 26, 2017.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-20989 Filed 9-29-17; 8:45 am]

**BILLING CODE 4140-01-P**

notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Muscular Dystrophy Coordinating Committee.

*Type of meeting:* Open Meeting.

*Date:* December 5, 2017.

*Time:* 1:00 p.m. to 2:30 p.m. \*Eastern Time\*

*Agenda:* The purpose of this meeting is to bring together committee members, representing government agencies, patient advocacy groups, other voluntary health organizations, and patients and families to update one another on progress relevant to the Action Plan for the Muscular Dystrophies.

*Place:* National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Call-In Number:* 1-650-479-3208.

*Public Access Code:* 622 734 375.

*Contact Person:* Glen Nuckolls, Ph.D., Program Director, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Boulevard, Room 2203, Rockville, MD 20892, Phone: (301) 496-5876, *Email:* [nuckollg@ninds.nih.gov](mailto:nuckollg@ninds.nih.gov).

Prior to the meeting, an agenda will be posted to the MDCC Web site: [www.mdcc.nih.gov](http://www.mdcc.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 26, 2017.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-20990 Filed 9-29-17; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel;

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Office of the Secretary; 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 Muscular Dystrophy Coordinating Committee.

The meeting will be open to the public and accessible by teleconference and live WebEx. Members of the public who wish to participate using WebEx should contact the Contact Person listed on this notice for the WebEx details. Individuals who plan to participate and need special assistance, such as reasonable accommodations, should

Health Disparities in and Caregiving for Alzheimer's Disease.

*Date:* October 27, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

*Contact Person:* Gabriel B Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435-3562, [fosug@csr.nih.gov](mailto:fosug@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular Probes.

*Date:* October 27, 2017.

*Time:* 8:00 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

*Contact Person:* Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435-1164, [custerm@csr.nih.gov](mailto:custerm@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Screenable Disorders: Therapeutics, Tools and Natural History.

*Date:* October 27, 2017.

*Time:* 8:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* JW Marriott New Orleans, 614 Canal Street, New Orleans, LA 70130.

*Contact Person:* Methode Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, 301-827-7088, [methode.bacanamwo@nih.gov](mailto:methode.bacanamwo@nih.gov).

*Name of Committee:* Bioengineering Sciences & Technologies Integrated Review Group; Biodata Management and Analysis Study Section.

*Date:* October 27, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

*Contact Person:* Wenchu Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301-435-0681, [liangw3@csr.nih.gov](mailto:liangw3@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Academic-Industrial Partnerships Research for Cancer Diagnosis and Treatment.

*Date:* October 27, 2017.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Guo Feng Xu, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301-237-9870, [xuguofen@csr.nih.gov](mailto:xuguofen@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR-14-066: Limited Competition: Specific pathogen free macaque colonies.

*Date:* October 27, 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:* Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301-451-2796, [bdey@mail.nih.gov](mailto:bdey@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Craniofacial Development and Musculoskeletal Tissue Engineering.

*Date:* October 27, 2017.

*Time:* 12:30 p.m. to 3:00 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:* Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301-435-1212, [kumarra@csr.nih.gov](mailto:kumarra@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Pathogenesis.

*Date:* October 30, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Richard G. Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240-519-7808, [kostrikr@csr.nih.gov](mailto:kostrikr@csr.nih.gov).

*Name of Committee:* Oncology 1-Basic Translational Integrated Review Group; Tumor Progression and Metastasis Study Section.

*Date:* October 30-31, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

*Contact Person:* Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, 301-495-1718, [jakobir@mail.nih.gov](mailto:jakobir@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Sleep, Health and Disparities.

*Date:* October 30, 2017.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301-594-3163, [champoux@csr.nih.gov](mailto:champoux@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR15-359: Biomarker Studies for Diagnosing Alzheimer's Disease and Predicting Progression.

*Date:* October 30, 2017.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5211, Bethesda, MD 20892, 301-760-8207, [schauweckerpe@csr.nih.gov](mailto:schauweckerpe@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Developing and Testing Interventions for Health-Enhancing Physical Activity.

*Date:* October 30, 2017.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301-594-3292, [niw@csr.nih.gov](mailto:niw@csr.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: September 27, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-21135 Filed 9-29-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Office of the Secretary; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Task Force on Research Specific to Pregnant Women and Lactating Women (PRGLAC) scheduled for November 6-7, 2017, in Conference Room C-D, 6001 Executive Boulevard, National Institutes of Health, Rockville, MD 20852, which was published in the **Federal Register** on April 18, 2017, 82 FR 18305.

The agenda for the meetings is listed below:

#### November 6, 2017—Day 1

- 8:30 a.m. Welcome and Opening Remarks
- 8:40 a.m. Introductions
- 9:15 a.m. Summary and discussion of work products from meeting 1
- 11:30 a.m. Open Public Presentations
- 1:15 p.m. Ethical issues surrounding the inclusion of pregnant women and lactating women in clinical research (brief presentations followed by open discussions)
- 4:50 p.m. Recap of Day 1, Action Items, Charge to Group
- 5:00 p.m. End of Day 1

#### November 7, 2017—Day 2

- 8:30 a.m. Recap from Day 1, Outline & Goals of Day 2
- 8:45 a.m. Panel: Inclusion of pregnant women and lactating women in research (brief presentations followed by open discussions)
- 10:45 a.m. Panel: Ethical issues of specific clinical research designs (brief presentations followed by open discussions)
- 1:00 p.m. Panel: Perspectives from industry, research participants, and researchers (brief presentations followed by open discussions)
- 4:30 p.m. Recap of Day 2, Action Items, Charge to Group
- 5:00 p.m. End of Day 2—ADJOURN Meeting

Public comments are welcome either by filing written comments and/or providing oral comments at the meeting. Oral comments from the public will be scheduled on November 6, 2017 from approximately 11:30 a.m.–12:00 noon. Any member of the public interested in presenting oral comments on November 6, 2017, should submit a letter of intent, a brief description of the organization represented, and the oral presentation to Ms. Lisa Kaeser ([Kaeserl@mail.nih.gov](mailto:Kaeserl@mail.nih.gov)) by 5:00 p.m. on Monday October 23, 2017. Written comments to be included at the meeting should also be sent to Lisa Kaeser by 5:00 p.m. on Monday October 23, 2017. The submitted presentations and any written comments will be formatted to be posted on the PRGLAC Web site for the record. Only one representative of an organization may be allowed to present oral comments. Presentations will be limited to three to five minutes per speaker depending on the number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received. Both printed and

electronic copies are requested for the record.

Any changes to the meeting agenda, including tentative times, as well as other relevant additional information about the meeting will be posted on the Web site for the Task Force on Research Specific to Pregnant Women and Lactating Women (PRGLAC) located at: <https://www.nichd.nih.gov/about/advisory/PRGLAC/Pages/index.aspx>.

Dated: September 26, 2017.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–20994 Filed 9–29–17; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Synapses, Cytoskeleton and Trafficking.

*Date:* October 18, 2017.

*Time:* 1:00 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:* Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, [geoffreys@csr.nih.gov](mailto:geoffreys@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Developing Computational Power for Biomedical Applications.

*Date:* October 24, 2017.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, [rosenzweig@csr.nih.gov](mailto:rosenzweig@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR17–158: Secondary Data Analyses to Explore NIMH Research Domain Criteria (R03).

*Date:* October 25, 2017.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, [bsokolov@csr.nih.gov](mailto:bsokolov@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Dynamics of Drug Dependence.

*Date:* October 25, 2017.

*Time:* 12:00 p.m. to 2:00 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:* Carole L Jelsema, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, [jelsemac@csr.nih.gov](mailto:jelsemac@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

*Date:* October 26–27, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

*Contact Person:* Raj K Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, 301–435–1047, [kkrishna@csr.nih.gov](mailto:kkrishna@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Ocular Surface, Cornea, Anterior Segment Glaucoma and Refractive Error.

*Date:* October 26–27, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

*Contact Person:* Kristin Kramer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205,

MSC 7846, Bethesda, MD 20892, (301) 437-0911, [kramerkm@csr.nih.gov](mailto:kramerkm@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Molecular Targets for Cancer Interventions.

*Date:* October 26–27, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

*Contact Person:* Careen K Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435-3504, [tothct@csr.nih.gov](mailto:tothct@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Urologic and Urogynecologic Applications.

*Date:* October 26, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

*Contact Person:* Ganesan Ramesh, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301-827-5467, [ganesan.ramesh@nih.gov](mailto:ganesan.ramesh@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Sensory and Motor Neuroscience, Cognition and Perception.

*Date:* October 26–27, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites by Hilton Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

*Contact Person:* Sharon S Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7846, Bethesda, MD 20892, 301-237-1487, [lowss@csr.nih.gov](mailto:lowss@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR-17-047—Selective Cell and Network Vulnerability in Aging and Alzheimer's Disease.

*Date:* October 26, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin, Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Afia Sultana, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827-7083, [sultanaa@mail.nih.gov](mailto:sultanaa@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Somatosensory and Pain Systems.

*Date:* October 26–27, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Darcy, 1515 Rhode Island Avenue NW., Washington, DC 20005.

*Contact Person:* M Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301-435-1766, [bennettc3@csr.nih.gov](mailto:bennettc3@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR-15-358—Molecular and Cellular Causal Aspects of Alzheimer's Disease.

*Date:* October 26, 2017.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin, Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Afia Sultana, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 4189, Bethesda, MD 20892, (301) 827-7083, [sultanaa@mail.nih.gov](mailto:sultanaa@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Learning, Memory, Synaptic Plasticity.

*Date:* October 26, 2017.

*Time:* 9:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301-435-1242, [kgt@mail.nih.gov](mailto:kgt@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Disorders.

*Date:* October 26, 2017.

*Time:* 9:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435-1743, [margaret.chandler@nih.gov](mailto:margaret.chandler@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Biomedical Imaging, Translational and Clinical Sciences Applications.

*Date:* October 26, 2017.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Mehrdad Mohseni, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301-435-0484, [mohsenim@csr.nih.gov](mailto:mohsenim@csr.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: September 27, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-21134 Filed 9-29-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Proposed Collection; 60-Day Comment Request; A Generic Submission for Formative Research, Pre-testing, Stakeholder (National Cancer Institute)

**AGENCY:** National Institutes of Health, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**DATES:** Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Amy Williams, Director of the Office of Advocacy Relations (OAR), NCI, NIH, 31 Center Drive, Bldg. 31, Room 10A28, MSC 2580, Bethesda, MD 20892, call non-toll-free number 240-781-3406, or email your request, including your address, to [amy.williams@nih.gov](mailto:amy.williams@nih.gov). Formal requests for additional plans and instruments must be requested in writing.

**SUPPLEMENTARY INFORMATION:** Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including

whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Proposed Collection Title:* A Generic Submission for Formative Research, Pre-testing, Stakeholder Measures and Advocate Forms at NCI, 0925–0641. Extension. National Cancer Institute (NCI), National Institutes of Health (NIH).

#### *Need and Use of Information*

*Collection:* This is a request for OMB to approve the extension of the generic collection titled, "A Generic Submission

for Formative Research, Pre-testing, Stakeholder Measures and Advocate Forms at NCI" for an additional three years of data collection. The Office of Advocacy Relations (OAR) disseminates cancer-related information to a variety of stakeholders, seeks input and feedback, and facilitates collaboration to advance NCI's authorized programs. It is beneficial for NCI, through the OAR, to pretest strategies, concepts, activities and materials while they are under development. Additionally, administrative forms are a necessary part of collecting demographic information and areas of interest for advocates. Since OAR is responsible for matching advocates to NCI programs and initiatives across the cancer continuum, it is necessary to measure the satisfaction of both internal and external stakeholders with this collaboration. This customer satisfaction research helps ensure the relevance, utility, and appropriateness of the many initiatives and products that OAR and

NCI produce. The OAR will use a variety of qualitative (interviews) methodology to conduct this research, allowing NCI to: (1) Understand characteristics (attitudes, beliefs, and behaviors) of the intended target audience and use this information in the development of effective strategies, concepts, activities; (2) use a feedback loop to help refine, revise, and enhance OAR's efforts—ensuring that they have the greatest relevance, utility, appropriateness, and impact for/to target audiences; and (3) expend limited program resource dollars wisely and effectively. The anticipated respondents will consist of: Adult cancer research advocates; members of the public; health care professionals; and organizational representatives.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 45.

#### ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent                   | Number of respondents | Number of responses per respondent | Average time per response (in hours) | Total annual burden hour |
|--------------------------------------|-----------------------|------------------------------------|--------------------------------------|--------------------------|
| Individual In-Depth Interviews ..... | 40                    | 1                                  | 30/60                                | 20                       |
| Profile Completion .....             | 50                    | 1                                  | 30/60                                | 25                       |
| Total .....                          | 90                    | 90                                 | .....                                | 45                       |

Dated: September 19, 2017.

**Karla Bailey,**

*Project Clearance Liaison, National Cancer Institute, National Institutes of Health.*

[FR Doc. 2017–21047 Filed 9–29–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Initial Review Group.

*Date:* October 19–20, 2017.

*Time:* 8:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research National Institutes of Health, 6701 Democracy Blvd., Suite 710, Bethesda, MD 20892, (301) 594–5966, [wli@mail.nih.gov](mailto:wli@mail.nih.gov). (Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 26, 2017.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–20992 Filed 9–29–17; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR17–122; NINDS Exploratory Clinical Trials.

*Date:* October 20, 2017.

*Time:* 10:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Samuel C. Edwards, Ph.D., Chief, Brain Disorders and Clinical Neuroscience, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435-1246, [edwardss@csr.nih.gov](mailto:edwardss@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Shared Instrumentation Grant (SIG) Program (S10).  
*Date:* October 24–25, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301-379-9351, [allen.richon@nih.hhs.gov](mailto:allen.richon@nih.hhs.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Psychosocial Risks and Disease Prevention.

*Date:* October 24, 2017.

*Time:* 1:00 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 (Virtual Meeting).

*Contact Person:* Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301-594-3292, [niw@csr.nih.gov](mailto:niw@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Mechanisms of Muscle Diseases and Regeneration.

*Date:* October 24, 2017.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Srikanth Ranganathan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7802, Bethesda, MD 20892, 301-435-1787, [srikanth.ranganathan@nih.gov](mailto:srikanth.ranganathan@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR 16-114: Spermatogenic Stem Cell Culture Systems.

*Date:* October 24, 2017.

*Time:* 2:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301-435-0229, [gary.hunnicutt@nih.gov](mailto:gary.hunnicutt@nih.gov).

*Name of Committee:* Bioengineering Sciences & Technologies Integrated Review Group; Gene and Drug Delivery Systems Study Section.

*Date:* October 25–26, 2017.

*Time:* 8:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Pier 2620 Hotel, 2620 Jones Street, San Francisco, CA 94133.

*Contact Person:* Kee Hyang Pyon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, 301-272-4865, [pyonkh2@csr.nih.gov](mailto:pyonkh2@csr.nih.gov).

*Name of Committee:* Oncology 1-Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.

*Date:* October 25–26, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

*Contact Person:* Angela Y. Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301-435-1715, [ngan@mail.nih.gov](mailto:ngan@mail.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.

*Date:* October 25–26, 2017.

*Time:* 9:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435-1178, [fujij@csr.nih.gov](mailto:fujij@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Nephrology.

*Date:* October 25, 2017.

*Time:* 11:00 a.m. to 2:00 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:* Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594-1245, [ivinsj@csr.nih.gov](mailto:ivinsj@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Epidemiology and Cohort Studies for Alzheimer's Disease, Related Dementias, and Cognitive Resilience.

*Date:* October 25, 2017.

*Time:* 11:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237-2693, [voglergp@csr.nih.gov](mailto:voglergp@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Neural Trauma and Stroke.

*Date:* October 25, 2017.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301-435-1785, [kondratyevad@csr.nih.gov](mailto:kondratyevad@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapeutics and Biology.

*Date:* October 25, 2017

*Time:* 12:00 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Nicholas J. Donato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040, Bethesda, MD 20817, 301-827-4810, [nick.donato@nih.gov](mailto:nick.donato@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: September 26, 2017.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-20986 Filed 9-29-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Integrative Health; 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 ZAT1 AJT (04).

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Integrative Health Special Emphasis Panel; NIH Health Care Systems Research Collaboratory Review.

*Date:* October 31, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, Bethesda, MD 20892.

*Contact Person:* Ashlee Tipton, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Center for Complementary and Integrative Health, 6707 Democracy Boulevard, Room 401, Bethesda, MD 20892, 301-451-3849, [ashlee.tipton@nih.gov](mailto:ashlee.tipton@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Integrative Health, National Institutes of Health, HHS)

*Dated:* September 26, 2017.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-20987 Filed 9-29-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to

full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at <http://www.samhsa.gov/workplace>.

#### FOR FURTHER INFORMATION CONTACT:

Giselle Hersch, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N03A, Rockville, Maryland 20857; 240-276-2600 (voice).

**SUPPLEMENTARY INFORMATION:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. The "Mandatory Guidelines for Federal Workplace Drug Testing Programs," as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug

and specimen validity tests on urine specimens:

#### HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780-784-1190, (Formerly: Gamma-Dynacare Medical Laboratories).

#### HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844-486-9226.

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504-361-8989/800-433-3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804-378-9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I-30, Little Rock, AR 72209-7056, 501-202-2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215-2802, 800-445-6917.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800-235-4890.

Dynacare\*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519-679-1630, (Formerly: Gamma-Dynacare Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662-236-2609.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713-856-8288/800-800-2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908-526-2400/800-437-4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919-572-6900/800-833-3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866-827-8042/800-233-6339, (Formerly: LabCorp Occupational Testing Services, Inc.;

MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913-888-3927/800-873-8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651-636-7466/800-832-3244.

Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503-413-5295/800-950-5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612-725-2088, Testing for Veterans Affairs (VA) Employees Only.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661-322-4250/800-350-3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888-747-3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800-328-6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509-755-8991/800-541-7891x7.

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888-635-5840.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800-729-6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610-631-4600/877-642-2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818-737-6370, (Formerly: SmithKline Beecham Clinical Laboratories).

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800-255-2159.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800-442-0438.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755-5235, 301-677-7085, Testing for Department of Defense (DoD) Employees Only.

The following laboratory is voluntarily withdrawing from the National Laboratory Certification Program effective September 30, 2017:

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615-255-2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories).

\* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

**Charles LoDico,**  
*Chemist.*

[FR Doc. 2017-21064 Filed 9-29-17; 8:45 am]

**BILLING CODE 4160-20-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4330-DR; Docket ID FEMA-2017-0001]

### Vermont; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the

State of Vermont (FEMA-4330-DR), dated August 16 2017, and related determinations.

**DATES:** The amendment was issued on September 21, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Mark H. Landry as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Brock Long,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017-21118 Filed 9-29-17; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-3391-EM; Docket ID FEMA-2017-0001]

### Puerto Rico; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the Commonwealth of Puerto Rico (FEMA-3391-EM), dated September 18, 2017, and related determinations.

**DATES:** The declaration was issued September 18, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 18, 2017, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Puerto Rico resulting from Hurricane Maria beginning on September 17, 2017, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the Commonwealth of Puerto Rico.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property, and ensure public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Alejandro DeLaCampa, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this declared emergency:

All 78 municipalities in the Commonwealth of Puerto Rico for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Brock Long,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017–21104 Filed 9–29–17; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3389–EM; Docket ID FEMA–2017–0001]

### Alabama; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Alabama (FEMA–3389–EM), dated September 11, 2017, and related determinations.

**DATES:** The declaration was issued September 11, 2017.

#### FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 11, 2017, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Alabama resulting from Hurricane Irma beginning on September 8, 2017, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of Alabama.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property, and ensure public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Warren J. Riley, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Alabama have been designated as adversely affected by this declared emergency:

All 67 counties in the State of Alabama and the Poarch Band of Creek Indians for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Brock Long,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017–21103 Filed 9–29–17; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–3389–EM; Docket ID FEMA–2017–0001]

**Alabama; Amendment No. 1 to Notice of an Emergency Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.  
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Alabama (FEMA–3389–EM), dated September 11, 2017, and related determinations.

**DATES:** This amendment was issued September 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective September 14, 2017.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Brock Long,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017–21114 Filed 9–29–17; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4334–DR; Docket ID FEMA–2017–0001]

**Iowa; Amendment No. 2 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–4334–DR), dated August 27, 2017, and related determinations.

**DATES:** This amendment was issued September 25, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 27, 2017.

Dubuque and Winneshiek Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Brock Long,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017–21086 Filed 9–29–17; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4323–DR; Docket ID FEMA–2017–0001]

**North Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.  
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA–4323–DR), dated July 12, 2017, and related determinations.

**DATES:** The change occurred on September 21, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James R. Stephenson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. McCool as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Brock Long,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017–21088 Filed 9–29–17; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4332–DR; Docket ID FEMA–2017–0001]

**Texas; Amendment No. 9 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.  
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4332–DR), dated August 25, 2017, and related determinations.

**DATES:** This amendment was issued September 19, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 25, 2017.

Burleson, Grimes, Madison, and Washington Counties for Public Assistance.

Austin, Bastrop, and Lee Counties for Public Assistance [Categories C-G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Brock Long,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017-21120 Filed 9-29-17; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4337-DR; Docket ID FEMA-2017-0001]

### Florida; Amendment No. 9 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Florida (FEMA-4337-DR), dated September 10, 2017, and related determinations.

**DATES:** This amendment was issued September 21, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 10, 2017.

Baker, Broward, Charlotte, Clay, Collier, Duval, Flagler, Glades, Hendry, Hillsborough, Lee, Manatee, Miami-Dade, Monroe, Nassau, Palm Beach, Pasco, Putnam, Pinellas, Sarasota, and St. Johns Counties for Public Assistance [Categories C-G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Brock Long,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2017-21115 Filed 9-29-17; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6035-N-02]

### Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2017

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Notice.

**SUMMARY:** Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD

Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2017, and ending on June 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** For general information about this notice, contact Ariel Pereira, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street SW., Room 10282, Washington, DC 20410-0500, telephone 202-708-1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2017.

### SUPPLEMENTARY INFORMATION:

Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

- a. Identify the project, activity, or undertaking involved;
- b. Describe the nature of the provision waived and the designation of the provision;
- c. Indicate the name and title of the person who granted the waiver request;
- d. Describe briefly the grounds for approval of the request; and
- e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy

on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from April 1, 2017 through June 30, 2017. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the second quarter of calendar year 2017) before the next report is published (the third quarter of calendar year 2017), HUD will include any additional waivers granted for the second quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: September 26, 2017.

**Beth Zorc,**

*Principal Deputy General Counsel.*

## Appendix

### Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2017 Through June 30, 2017

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted. The regulatory waivers granted appear in the following order:

- I. Regulatory waivers granted by the Office of Community Planning and Development
- II. Regulatory waivers granted by the Office of Fair Housing and Equal Opportunity
- III. Regulatory waivers granted by the Office of Housing
- V. Regulatory waivers granted by the Office of Public and Indian Housing

#### I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

- *Regulation:* 24 CFR 91.105(b)(4) and 24 CFR 91.115(b)(4).

*Project/Activity:* On December 15, 2016, HUD issued CPD Notice #CPD-16-18 providing procedures for the submission and review of consolidated plans and action plans for FY 2017 funding prior to the enactment of a FY 2017 HUD appropriation bill. These procedures apply to any grantee whose consolidated plan/action plan submission deadline (45 days before the start of the program year) falls either before, or up to 60 days after, HUD's announcement of the FY 2017 formula program funding allocations for CDBG, ESG, HOME and HOPWA formula funding. The Notice advised these grantees not to submit their consolidated plans and action plans until the FY 2017 formula allocations were announced.

*Nature of Requirement:* The provisions at 24 CFR 91.105(b)(4) and 91.115(b)(4) require that grantees provide a period of not less than 30 days during which affected citizens may review and comment on the FY 2017 consolidated plan or action plan prior to its implementation.

*Granted By:* Clifford Taffet, General Deputy Assistant Secretary, Community Planning and Development.

*Date Granted:* May 10, 2017, with corrected waiver on May 18, 2017, for immediate effect.

*Reason Waived:* Under 24 CFR 91.15(a)(2), HUD cannot accept a consolidated plan or annual action plan submission later than August 16, 2017. If HUD does not receive a consolidated plan or action plan by August 16, 2017, a grantee automatically loses its FY 2017 CDBG funding. Implementation of the procedures provided in HUD Notice CPD-16-18 and the timing of the enactment of the FY 2017 appropriations act leaves

insufficient time for grantees to complete the pre-submission or pre-amendment citizen participation publication and comment process before the August 16, 2017 deadline. Given the delay in appropriations and the need for HUD to award funds so that grantees may begin to address their housing and community development needs, HUD waived the requirements in 24 CFR 91.105(b)(4) and 91.115(b)(4) to allow grantees to reduce the public comment period to a minimum of 14 calendar days. This waiver ensures grantees do not lose their FY 2017 funding, while also affording citizens a meaningful public comment period. Any affected grantee taking advantage of this waiver must document in writing the conditions for the need to utilize this waiver and must maintain this documentation for HUD's review. This waiver authority is only in effect until August 16, 2017.

*Contact:* Steve Johnson, Director, Entitlement Communities Division, Office of Block Grant Assistance, Office of Community Planning and Development, 451 7th Street SW., Room 7282, Washington, DC 20410, telephone (202) 708-1577.

#### II. Regulatory Waivers Granted by the Office of Fair Housing and Equal Opportunity

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

- *Regulation:* 24 CFR 115.305(a).

*Project/Activity:* Fair Housing Assistance Program (FHAP) agencies nationwide.

*Nature of Requirement:* Special Enforcement Effort (SEE) funds are funds that HUD will provide to an agency to enhance enforcement activities of the agency's fair housing law. SEE funds will be a maximum of 20% of the agency's total FHAP cooperative agreement for the previous contract year, based on approval of eligible activity or activities, and based on the appropriation of funds.

*Granted By:* Bryan Greene, General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

*Date Granted:* June 5, 2017.

*Reason Waived:* Temporary waiver of the 20 percent limitation on SEE Funds for eligible FHAP agencies whose total cooperative agreement for fiscal year 2016 was less than \$300,000.

*Contact:* Joseph Pelletier, Director, Fair Housing Assistance Program, Office of Fair Housing and Equal Opportunity, Department of Housing of Urban Development, 451 Seventh Street SW., Room 5206, Washington, DC 20410, telephone (202) 402-2126.

#### III. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

- *Regulation:* 24 CFR 200.73 (c).

*Project/Activity:* West Town Housing Preservation, Chicago, Illinois, Project No. 071-35892.

*Nature of Requirement:* HUD's regulation at 24 CFR 200.73(c) requiring that "not less

than five rental dwelling units [of an FHA insured multifamily housing project] shall be on one site. The property is a large, scattered-site portfolio of 68 apartment properties on 68 separate parcels. Forty-eight parcels have at least five units per site, so a majority of the parcels already meet the regulatory requirements. FHA will insure a loan through Section 221(d)(4) program to assist in the purchase and substantial rehabilitation of these properties. The unit counts for the buildings range from two to twelve, for a total of 318 units known as West Town Housing Preservation.

*Granted by:* Dana Wade, Principal Deputy Assistant Secretary for Housing, H.

*Date Granted:* April 12, 2017.

*Reason Waived:* The property is “affordable”, and it is in line with HUD’s mission to continue to ensure availability for residents in need of subsidized housing. Additionally, the project is zip codes 60622 and 60647, which have seen some of the highest rates of property appreciation over the past several decades in Chicago. The perseveration of these units as affordable housing is urgently needed due to the rapid gentrification that has taken place in the area in recent years. HUD is already subsidizing the property by the Section 8 contracts.

*Contact:* Daniel J. Sullivan, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–6130.

• *Regulation:* 24 CFR 200.73(c).

*Project/Activity:* Fields Corner Granite, FHA Project Number 023–1145, Dorchester, Massachusetts. Rockport Mortgage Company has applied for mortgage insurance under the Section 223(f) program to refinance Fields Corner Granite as a single project.

*Nature of Requirement:* HUD’s regulation at 24 CFR 200.73(c) which, states that a site must contain no less than 5 rental dwelling units. Section 3.2.O.CC of the MAP Guide permits a project with two or more contiguous parcels of land when the parcels comprise one marketable, manageable real estate entity.

*Granted By:* Dana Wade, Principal Deputy Assistant Secretary for Housing, H.

*Date Granted:* May 17, 2017.

*Reason Waived:* The waiver was granted to allow Fields Corner Granite as a single project since its meet HUD’s goal of preserving and maintaining affordable rental housing for low income families. The property consists of 67 units, configured as 1 studio unit, 24 one bedroom units, 24 two bedroom units, 7 three bedroom units, and 11 four bedroom units in the Fields Corner neighborhood of the Dorchester section of Boston. There is a total of 15 buildings situated on 5 sites, and referenced by the assessor as 10 separate parcels. Several of the buildings are located on adjoining sites with some of the structures being attached and sharing common utilities. Three of the sites are in the immediate vicinity of each other. Two sites are located within 11 blocks of each other. The sites have all been managed as a single entity.

*Contact:* Daniel J. Sullivan, Acting Director, Office of Multifamily Production,

Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–6130.

• *Regulation:* 24 CFR 200.73 (c).

*Project/Activity:* Camden Townhomes, FHA Project Number 035–35105, Camden, New Jersey. The owner and the proposed lender, Love Funding Company have applied for mortgage insurance under Section 221(d)(4) for the substantial rehabilitation of the Camden Townhouses, supplemented with 4% Low Income Housing Tax Credits and the loan proceeds from the Section 221(d)(4) loan of \$12,637,200.

*Nature of Requirement:* HUD’s regulation at 24 CFR 200.73(c) which, states that a site must contain no less than 5 rental dwelling units. Section 3.1.O.I.CC of the MAP Guide permits a project with two or more contiguous parcels of land when the parcels comprise one marketable, manageable real estate entity. Camden Townhouses is an existing 89-unit affordable housing property located in Camden, New Jersey. All 89 units were constructed during the late 19th and early 20th centuries. Thirty two of the eighty-nine units are located on sites that are comprised of five or more units. All units are located within 10 blocks of each other.

*Granted By:* Dana Wade, Principal Deputy Assistant Secretary for Housing, H.

*Date Granted:* June 8, 2017.

*Reason Waived:* The waiver was granted to allow the Camden Townhouses to proceed with an approved new 20-year Section 8 PBV HAP contract. The property will be renovated using New Jersey Housing and Mortgage Finance Agency (NJMFHA) 4% LIHTC. The scattered sites were assembled and recognized as a single manageable and marketable development by the New Jersey Department of Community Affairs (NJDCA). The project has been professionally managed as one project since its inception and has one operating budget. The property is “affordable” and it meets HUD’s mission to continue to ensure availability for residents in need of subsidized housing. HUD is already subsidizing the property through the Section 8 contracts. The project is in Camden, New Jersey, where the occupancy has remained strong and there is a high demand for affordable rental housing.

*Contact:* Daniel J. Sullivan, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–6130.

• *Regulation:* 24 CFR 266.410(e).

*Project/Activity:* Minnesota Housing Finance Agency’s (Minnesota Housing), Risk Sharing Program, St. Paul, Minnesota.

*Nature of Requirement:* The 24 CFR 266.410(e) Amortization. Requires mortgages insured under the 542(c) Housing Finance Agency Risk Sharing Program to be fully amortized over the term of the mortgage. The waiver would permit Minnesota Housing to provide loans that would have a minimum term of 17 years (“balloon loans”). Minnesota Housing would be able to provide additional financing options to their customers and better align the agency’s business practices with industry standards. The waiver would expire on December 18, 2018.

*Granted By:* Dana Wade, Principal Deputy Assistant Secretary for Housing, H.

*Date Granted:* June 19, 2017.

*Reason Waived:* This will reduce Minnesota Housing Finance Agency’s cost of capital, which should translate into lower rates for their borrowers, and will support their preservation efforts. Application of this waiver is limited in both time and scope. The Department’s exposure is further limited with the condition that Minnesota Housing takes 50 percent or more of the risk on these transactions. Minnesota Housing anticipates that new construction or substantial rehabilitation projects that are awarded Low Income Housing Tax Credits (LIHTC) would use the balloon loan product, as well as clients who have been utilizing other financing option, such as Fannie Mae or Freddie Mac, rather than Risk Share.

Minnesota Housing Finance Agency’s waiver approval is subject to the following conditions:

1. Minnesota Housing must elect to take 50 percent or more of the risk of loss on all transactions;
2. The waiver expires on December 31, 2018, or when HUD’s proposed rule revision becomes final, whichever event occurs first;
3. All other requirements of 24 CFR 266.410 remain applicable. The waiver is applicable only for new construction or substantial rehabilitation projects;
4. In accordance with 24 CFR 266.200(d), the mortgage may not exceed an amount supportable by the lower of Section 8, or comparable unassisted market rents;
5. If applicable, projects must comply with Davis–Bacon labor standards in accordance with 24 CFR 266.225.
6. Minnesota Housing must comply with regulations stated in 24 CFR 266.210 for insured advance or insurance upon completion transactions.
7. An Affordable Housing Deed restriction for 20 years must be recorded.

*Contact:* Daniel J. Sullivan, Acting Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–6130.

• *Regulation:* 24 CFR 290.30.

*Project/Activity:* La Casse/South Canal Apartments, FHA Project Number 023–105NI, Holyoke, MA. The Office of Multifamily Housing received a proposal from MassHousing, a state housing finance agency, to purchase a HUD-held Flexible Subsidy Operating Assistance Program note for \$587,969 on a non-competitive basis. The balance on the Flexible Subsidy note was \$6.7 million which alone was more than twice the as-is appraised value of the property. There was no equity in which to size a mortgage or utilize Low Income Housing Tax Credits, and therefore no ability to refinance all the existing debt on the property and defer the Flexible Subsidy Note with terms wherein it would be repayable.

*Nature of Requirement:* Section 290.30 requires that HUD shall sell HUD-held multifamily mortgages on a competitive basis.

*Granted by:* Genger Charles, General Deputy Assistant Secretary for Housing,

*Date Granted:* May 17, 2017.

*Reason Waived:* The proposed purchase price was deemed to be the highest recovery amount possible on the note. Due to the lack of operating funds to repay on the note and its 4th lien position, there was a high risk that there would be no bidders on a competitive basis. MassHousing approved a refinancing of the property in which their purchase of the note would significantly reduce the debt burden and allow the property to cash flow and be rehabilitated. The waiver of the proposed portion of the 24 CFR 290.30 does not violate any statutory requirements. Granting of this waiver ensured that the Department obtained the maximum recovery as possible on the claim, while selling to an entity fully invested in the preservation of affordable housing.

*Contact:* Thomas R. Davis, Director, Office of Recapitalization, Office of Multifamily Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6230, Washington, DC 20410, telephone (202) 402-7549.

• *Regulation:* 24 CFR 290.30(a).

*Project/Activity:* Andrews Plaza, FHA Project Number 012-57128 V, Bronx, New York. Andrews Plaza Housing Associates, L.P. (Owner) seeks approval to waive the non-competitive sale of a HUD-held multifamily mortgage.

*Nature of Requirement:* The regulation at 24 CFR 290.30(a), which governs the sale of HUD-held mortgages, states that "[e]xcept as otherwise provided in Section 290.31(a)(2), HUD will sell HUD-held multifamily mortgages on a competitive basis."

*Granted by:* Genger Charles, General Deputy Assistant Secretary for Housing, H. *Date Granted:* May 4, 2017.

*Reason Waived:* The owner requested and was granted a waiver of the non-competitive sale of a HUD-held multifamily mortgage. A waiver allows the Department to assign the mortgage to the owner's new mortgagee to avoid paying mortgage recording tax in the State of New York.

*Contact:* Cindy Bridges, Senior Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6168, Washington, DC 20410, telephone (202) 402-2603.

• *Regulation:* 24 CFR 290.30(a).

*Project/Activity:* Prospect Arms, FHA Project Number 012-57053 V and W, Brooklyn, New York. Prospect Arms, L.P. (owner) seeks approval to waive the non-competitive sale of two HUD-held multifamily mortgages.

*Nature of Requirement:* The regulation at 24 CFR 290.30(a), which governs the sale of HUD-held mortgages, states that "[e]xcept as otherwise provided in Section 290.31(a)(2), HUD will sell HUD-held multifamily mortgages on a competitive basis."

*Granted by:* Genger Charles, General Deputy Assistant Secretary for Housing, H. *Date Granted:* June 8, 2017.

*Reason Waived:* The owner requested and was granted a waiver of the non-competitive sale of two HUD-held multifamily mortgages. A waiver allows the Department to assign the mortgages to the Owner's new mortgagee to avoid paying mortgage recording tax in the State of New York.

*Contact:* Cindy Bridges, Senior Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6168, Washington, DC 20410, telephone (202) 402-2603.

• *Regulation:* 24 CFR 290.30(a).

*Project/Activity:* Miramar Court Apartments, FHA Project Number 012-57123 V, Bronx, New York. LRF Housing Associates, L.P. (Owner) seeks approval to waive the non-competitive sale of a HUD-held multifamily mortgage.

*Nature of Requirement:* The regulation at 24 CFR 290.30(a), which governs the sale of HUD-held mortgages, states that "[e]xcept as otherwise provided in Section 290.31(a)(2), HUD will sell HUD-held multifamily mortgages on a competitive basis."

*Granted by:* Genger Charles, General Deputy Assistant Secretary for Housing, H. *Date Granted:* June 23, 2017.

*Reason Waived:* The owner requested and was granted a waiver of the non-competitive sale of a HUD-held multifamily mortgage. A waiver allows the Department to assign the mortgage to the owner's new mortgagee to avoid paying mortgage recording tax in the State of New York.

*Contact:* Cindy Bridges, Senior Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6168, Washington, DC 20410, telephone (202) 402-2603.

• *Regulation:* 24 CFR 290.30(a).

*Project/Activity:* Villa Alejandrina Apartments, FHA Project Number 012-57308 V and W, Bronx, New York. Brook Avenue Development Company, L.P. (Owner) seeks approval to waive the non-competitive sale of two HUD-held multifamily mortgages.

*Nature of Requirement:* The regulation at 24 CFR 290.30(a), which governs the sale of HUD-held mortgages, states that "[e]xcept as otherwise provided in Section 290.31(a)(2), HUD will sell HUD-held multifamily mortgages on a competitive basis."

*Granted by:* Genger Charles, General Deputy Assistant Secretary for Housing, H. *Date Granted:* June 23, 2017.

*Reason Waived:* The owner requested and was granted a waiver of the non-competitive sale of two HUD-held multifamily mortgages. A waiver allows the Department to assign the mortgages to the Owner's new mortgagee to avoid paying mortgage recording tax in the State of New York.

*Contact:* Cindy Bridges, Senior Account Executive, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6168, Washington, DC 20410, telephone (202) 402-2603.

#### **IV. Regulatory Waivers Granted by the Office of Public and Indian Housing**

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801 and 24 CFR 902.33(b).

*Project/Activity:* Kennewick Housing Authority (WA012).

*Nature of Requirement:* The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate

Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and 2 CFR part 200 subpart F.

*Granted By:* Jemine A. Bryon, General Deputy Assistant Secretary for Public and Indian Housing.

*Date Granted:* May 19, 2017.

*Reason Waived:* The Kennewick Housing Authority requested relief of financial condition scoring and its financial reporting requirements for the fiscal year end (FYE) of September 30, 2016. The HA's records and building contents were all destroyed during the storm disaster of October 2016. Therefore, the HA was approved until June 12, 2017, to submit its unaudited financial statements, as well as to submit its audited financial statements to HUD. The audited financial approval only permits the extension for filing. This FASS audited financial submission extension does not apply to Single Audit submissions to the Federal Audit Clearinghouse; the HA is required to meet the Single Audit due date.

*Contact:* Dee Ann R. Walker, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475-7908.

• *Regulation:* 24 CFR 990.250(b)(1).

*Project/Activity:* Alexander County HA (ACHA) in Cairo, IL (Code: IL007).

*Nature of Requirement:* The regulation states that a Public Housing Agency (PHA) is required to acquire an independent cost assessment of its projects when requesting an operating subsidy appeal. The ACHA requested a waiver to the requirement to receive an independent cost estimate to appeal their project expense level (PEL) funding.

*Granted By:* Jemine A. Bryon, General Deputy Assistant Secretary for Public and Indian Housing.

*Date Granted:* May 31, 2017.

*Reason Waived:* ACHA, currently under HUD possession, faces economic hardship that severely impact its financial stability, and limit the PHA's ability to complete an independent cost estimate prior to the submission of a PEL appeal. An April 2017 report completed by HUD's Quality Assurance Subsystem (QASS) determined that the model-generated PEL was not accurate for comparable properties in the market area resulting in reduced funding by more than ten percent. Coupled with ACHA's dire financial position and accompanying exigent circumstances, HUD found that the QASS report meet the intent of the requirement of 24 CFR 990.250(b)(1). Thereby, the Department determined that ACHA demonstrated good cause pursuant to 24 CFR part 5.110 to grant the waiver.

*Contact:* Monica Shepherd, Public Housing Management and Occupancy Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room

4208, Washington, DC 20410, telephone (202) 402-5687.

[FR Doc. 2017-21075 Filed 9-29-17; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5997-N-65]

### 30-Day Notice of Proposed Information Collection: HUD Environmental Review Online System (HEROS)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

**DATES:** *Comments Due Date:* November 1, 2017.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806, Email: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at [Anna.P.Guido@](mailto:Anna.P.Guido@)

[hud.gov](http://hud.gov) or telephone 202-402-5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 16, 2017 at 82 FR 27718.

#### A. Overview of Information Collection

*Title of Information Collection:* HUD Environmental Review Online System (HEROS).

*OMB Approval Number:* 2506-0202.

*Type of Request:* Reinstatement with change of a previously approved collection.

*Form Number:* None.

*Description of the need for the information and proposed use:* 24 CFR part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities" requires units of general local government receiving HUD assistance to maintain a written environmental review record for all projects receiving HUD funding documenting compliance with the National Environmental Policy Act (NEPA), the regulations of the Council on Environmental Quality, related federal environmental laws, executive orders, and authorities, and Part 58 procedure. Various laws that authorize this procedure are listed in 24 CFR 58.1(b). 24 CFR part 50, "Protection

and Enhancement of Environmental Quality," implements procedures for HUD to perform environmental reviews for projects where Part 58 is not permitted by law. Under Part 50, HUD staff complete the environmental review records, but they may use any information supplied by an applicant or contractor, provided HUD independently evaluates the information and is responsible for its accuracy and prepares the environmental finding. HEROS allows users to complete, store, and submit their environmental review records and documents online. HEROS is currently optional for Responsible Entity and other non-HUD users, who may continue to use paper-based environmental review formats; however, HUD staff in many offices are required to use HEROS to complete their environmental reviews.

*Respondents (i.e. affected public):* The respondents are state and local governments receiving HUD funding who are required to complete environmental reviews.

*Respondents (i.e. affected public):* 3,932.

*Estimated Number of Respondents:* 1.

*Frequency of Response:* 3,932.

*Average Hours per Response:* Varies depending on level of review (see table below). Reviews that are exempt or Categorically Excluded Not Subject To the related laws and authorities (CENST) take roughly 45 minutes to complete. Reviews that are Categorically Excluded Subject To the related laws (CEST) or require an Environmental Assessment (EA) take an average of 4 hours to complete.

*Total Estimated Burdens:* 7,752 hours or \$258,391.

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|------------------------|-----------------------|-----------------------|---------------------|--------------------------|---------------------|--------------------------|-------------|
| Exempt/CENST reviews   | 2,454                 | 1                     | 2,454               | .75                      | 1,840.50            | \$33.33                  | \$6,1344    |
| CEST/EA reviews .....  | 1,478                 | 1                     | 1,478               | 4.00                     | 5,912.00            | 33.33                    | 197,047     |
| Total .....            | 3,932                 | 1                     | 3,932               | .....                    | 7,752.50            | 33.33                    | 258,391     |

#### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of

information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 21, 2017.

**Anna P. Guido,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 2017-21087 Filed 9-29-17; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5997-N-64]

### 30-Day Notice of Proposed Information Collection: Request for Prepayment of Section 202 or 202/8 Direct Loan Project

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

**DATES:** *Comments Due Date:* November 1, 2017.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806, Email: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Inez C. Downs, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email [Inez\\_C\\_Downs@hud.gov](mailto:Inez_C_Downs@hud.gov), or telephone 202-402-8046. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

Copies of available documents submitted to OMB may be obtained from Ms. Downs.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 14, 2017 at 82 FR 32569.

## A. Overview of Information Collection

*Title of Information Collection:* Request for Prepayment of Section 202 or 202/8 Direct Loan Project.

*OMB Approval Number:* 2502-0554.

*Type of Request:* Revision of a currently approved collection.

*Form Number:* HUD-9808.

*Description of the need for the information and proposed use:* Owners of Section 202 projects use the form as the initial application to prepay their Section 202 Direct Loan and provide narrative information relative to the prepayment that must be reviewed by HUD staff, including a draft the applicable Use Agreement required in most prepayments.

*Respondents (i.e. affected public):* Business, Not for profit institution.

*Estimated Number of Respondents:* 1,566.

*Estimated Number of Responses:* 1,566.

*Frequency of Response:* On occasion.

*Average Hours per Response:* 1 hours.

*Total Estimated Burden:* 1,566.

## B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 21, 2017.

**Inez C. Downs,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 2017-21089 Filed 9-29-17; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-HQ-IA-2017-N137;  
FXIA16720900020-167-FF09A2000; OMB  
Control Number 1018-0123]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; International Conservation Grant Programs

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service, are proposing to revise an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before November 1, 2017.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or via facsimile to (202) 395-5806. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail); or by email to [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov). Please reference OMB Control Number 1018-0123 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov), or by telephone at (703) 358-2503. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of

information was published on June 27, 2017 (82 FR 29093). No comments were received in response to that notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract:** Some of the world's most treasured and exotic animals are dangerously close to extinction. Destruction of natural habitat, illegal poaching, and pet-trade smuggling are devastating populations of tigers, rhinos, marine turtles, great apes, elephants, and many other highly cherished species. The Division of International Conservation and Division of Scientific Authority administer competitive grant programs funded under the following authorities:

- African Elephant Conservation Act (16 U.S.C. 4201–4245).
- Asian Elephant Conservation Act of 1997 (16 U.S.C. 4261).
- Great Apes Conservation Act of 2000 (16 U.S.C. 85).
- Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5306).
- Marine Turtle Conservation Act (16 U.S.C. 82).
- Endangered Species Act (16 U.S.C. 1531 *et seq.*) (Wildlife Without Borders Programs—Africa, Mexico, Latin America and the Caribbean, Russia, Critically Endangered Species, Combatting Wildlife Trafficking, and Amphibians in Decline).

Applicants submit proposals for funding in response to Notices of Funding Opportunity published by the Service on *Grants.gov*. We collect the following information:

- Project summary and narrative.
- Letter of appropriate government endorsement.
- Brief curricula vitae for key project personnel.
- Complete Standard Forms 424 and 424b (nondomestic applicants do not submit the standard forms).

Proposals may also include, as appropriate, a copy of the organization's Negotiated Indirect Cost Rate Agreement (NICRA) and any additional documentation supporting the proposed project.

The project summary and narrative are the basis for this information collection. A panel of technical experts reviews each proposal to assess how well the project addresses the priorities identified by each program's authorizing legislation and the associated project costs. As all of the on-the-ground projects are conducted outside the United States, the letter of appropriate government endorsement ensures that the proposed activities will be supportive of locally identified priorities and needs. Brief curricula vitae for key project personnel allow the review panel to assess the qualifications of project staff to effectively carry out the project goals and objectives. As all Federal entities must honor the indirect cost rates an organization has negotiated with its cognizant agency, we require all organizations with a NICRA to submit the agreement paperwork with their proposals to verify how their rate is applied in their proposed budget.

All assistance awards under these grant programs have a maximum reporting requirement of:

- An interim report (performance report and a financial status report) as appropriate, and
- A final report (performance and financial status report and copies of all deliverables, photographic documentation of the project and products resulting from the project) due within 90 days of the end of the performance period.

In accordance with DOI/FWS Policy, FWS Form 3–2338, “International Conservation Programs Cover Page) has expired and been replaced by the Standard Form 424 for all applicants to all of our programs. Accordingly, this collection is being revised to remove FWS Form 3–2338 which is no longer used.

**Title of Collection:** International Conservation Grant Programs.

**OMB Control Number:** 1018–0123.

**Form Number:** None.

**Type of Review:** Revision of a currently approved collection.

**Respondents/Affected Public:** Domestic and nondomestic individuals;

nonprofit organizations; educational institutions; private sector entities; and State, local, and tribal governments.

**Total Estimated Number of Annual Responses:** 744.

**Total Estimated Number of Annual Responses:** 1,272.

**Estimated Completion Time per Response:** 22 hours for grant applications and 40 hours for grant reporting.

**Total Estimated Number of Annual Burden Hours:** 38,856.

**Respondent's Obligation:** Required to Obtain or Retain a Benefit.

**Frequency of Collection:** On occasion.

**Total Estimated Annual Nonhour**

**Burden Cost:** None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 27, 2017.

**Madonna L. Baucum,**

*Information Collection Clearance Officer, U.S. Fish and Wildlife Service.*

[FR Doc. 2017–21038 Filed 9–29–17; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLWO260000.L10600000.PC0000.  
LXSIADVSBD00.17X]

### Wild Horse and Burro Advisory Board Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of advisory board meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Wild Horse and Burro Advisory Board (Advisory Board) will meet as indicated below.

**DATES:** The Advisory Board will hold a public meeting on Wednesday and Thursday, October 18 and 19, 2017, from 8 a.m. to 5 p.m. Mountain Time (MT) each day. A field tour will be held on Tuesday, October 17, 2017, from 8 a.m. to 5 p.m. MT.

**ADDRESSES:** The Advisory Board will meet at the Grand Vista Hotel, 2790 Crossroads Blvd., Grand Junction, CO 81506; hotel Web site: <http://www.grandvistahotel.com/>; hotel phone:

970-241-8411 or 1-800-800-7796. The field tour will depart from the hotel lobby.

Written comments pertaining to the October 18–19, 2017, Advisory Board meeting and written statements that will be presented to the board can be mailed to the National Wild Horse and Burro Program, WO-260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, NV 89502-7147, or emailed to: [whbadvisoryboard@blm.gov](mailto:whbadvisoryboard@blm.gov). Please include “Advisory Board Comment” in the subject line of the email.

**FOR FURTHER INFORMATION CONTACT:** Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775-861-6583, or by email at [rdelorme@blm.gov](mailto:rdelorme@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Advisory Board advises the Secretary of the Interior, the BLM Director, the Secretary of Agriculture, and the Chief of the U.S. Forest Service on matters pertaining to the management and protection of wild, free-roaming horses and burros on the Nation’s public lands. The Advisory Board operates under the authority of 43 CFR 1784. The tentative agenda for the meeting is:

#### I. Advisory Board Public Meeting

*Tuesday, October 17, 2017 (8 a.m.–5 p.m.)*

Field Tour of the Little Book Cliffs Herd Management Area.

The field tour is open to limited public attendance on a first-come, first-served advance sign up. Attendees must provide for their own transportation (high-clearance vehicle recommended) and personal needs. To sign up, contact Dorothea Boothe by email at [dboothe@blm.gov](mailto:dboothe@blm.gov).

*Wednesday, October 18, 2017 (8 a.m.–5:00 p.m.)*

Welcome, Introductions, and Agenda Review  
Advisory Board September Meeting Minutes Review/Approval  
BLM Responses to Advisory Board Recommendations from September 2016 Meeting  
Wild Horse and Burro Program Overview and Status  
Science Presentations  
Public Comment Period (3 p.m.–5 p.m.)  
Adjourn

*Thursday, October 19, 2017 (8 a.m.–5 p.m.)*

Welcome, Introductions, and Agenda Review

What are the Key Elements of a Sustainable Wild Horse and Burro Program?

Advisory Board Discussion and Recommendations to the BLM  
Adjourn

The meeting will be live-streamed at [www.blm.gov/live](http://www.blm.gov/live). The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify Ms. DeLorme 2 weeks before the scheduled meeting date, see the **FOR FURTHER INFORMATION CONTACT** section above. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange for it.

#### II. Public Comment Procedures

On Wednesday, October 18, from 3 p.m. to 5 p.m., members of the public will have the opportunity to make comments to the Advisory Board on the Wild Horse and Burro Program. Persons wishing to make comments during the meeting should register in person with the BLM prior to 3 p.m. on October 18, at the meeting location. Depending on the number of commenters, the Advisory Board may limit the length of comments. At previous meetings, comments have been limited to 3 minutes in length; however, this time may vary. Speakers are requested to submit a written copy of their statement to the address listed in the **ADDRESSES** section above, or bring a written copy to the meeting. There may be a webcam present during the entire meeting and individual comments may be recorded.

Participation in the Advisory Board meeting does not require the submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM considers comments that are either supported by quantitative information or studies, or those that include citations to and analysis of applicable laws and regulations, to be the most useful and likely to influence the BLM’s decisions on the management and protection of wild horses and burros.

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 in your comment that the BLM withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

**Authority:** 43 CFR 1784.4–2

**Kristin Bail,**

*Assistant Director, Resources and Planning.*

[FR Doc. 2017–20935 Filed 9–29–17; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

[RR83550000, 17XR0680A1, RX.31580001.0090104; OMB Control Number 1006–0023]

#### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Forms To Determine Compliance by Certain Landholders, 43 CFR Part 426

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation (Reclamation), are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before November 1, 2017.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget’s Desk Officer for the Department of the Interior by email at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or via facsimile to (202) 395–5806. Please provide a copy of your comments to Stephanie McPhee, Bureau of Reclamation, 84–55000, P.O. Box 25007, Denver, CO 80225–0007; or via email to [smcphoe@usbr.gov](mailto:smcphoe@usbr.gov). Please reference OMB Control Number 1006–0023 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Stephanie McPhee, Bureau of Reclamation, by email at [smcphoe@usbr.gov](mailto:smcphoe@usbr.gov), or by telephone at (303) 445–2897. You may also view the information collection request at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork

Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on December 21, 2016 (81 FR 93709). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of Reclamation; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might Reclamation enhance the quality, utility, and clarity of the information to be collected; and (5) how might Reclamation minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract: Identification of limited recipients**—Some entities that receive Reclamation irrigation water may believe that they are under the Reclamation Reform Act of 1982 (RRA) forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these entities may in fact have a different RRA forms submittal threshold than what they believe it to be due to the number of natural persons benefiting from each entity and the location of the land held by each entity. In addition, some entities that are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land) may in fact be receiving Reclamation irrigation water

for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The information obtained through completion of the Limited Recipient Identification Sheet (Form 7–2536) allows us to establish entities' compliance with Federal reclamation law. The Limited Recipient Identification Sheet is disbursed at our discretion.

**Trust review**—In order to administer section 214 of the RRA and 43 CFR 426.7, we are required to review and approve all trusts. Land held in trust generally will be attributed to the beneficiaries of the trust rather than the trustee if the criteria specified in the RRA and 43 CFR 426.7 are met. We may extend the option to complete and submit for our review the Trust Information Sheet (Form 7–2537) instead of actual trust documents when we become aware of trusts with a relatively small landholding (40 acres or less in districts subject to the prior law provisions of Federal reclamation law, 240 acres or less in districts subject to the discretionary provisions of Federal reclamation law). If we find nothing on the completed Trust Information Sheet that would warrant the further investigation of a particular trust, that trustee will not be burdened with submitting trust documents to us for in-depth review. The Trust Information Sheet is disbursed at our discretion.

**Acreage limitation provisions applicable to public entities**—Land farmed by a public entity can be considered exempt from the application of the acreage limitation provisions provided the public entity meets certain criteria pertaining to the revenue generated through the entity's farming activities (43 CFR 426.10 and the Act of July 7, 1970, Pub. L. 91–310). We are required to ascertain whether or not public entities that receive Reclamation irrigation water meet such revenue criteria regardless of how much land the public entities hold (directly or indirectly own or lease) [43 CFR 426.10(a)]. In order to minimize the burden on public entities, standard RRA forms are submitted by a public entity only when the public entity holds more than 40 acres subject to the acreage limitation provisions westwide, which makes it difficult to apply the revenue criteria as required to those public entities that hold less than 40 acres. When we become aware of such public entities, we request those public entities complete and submit for our review the Public Entity Information Sheet (Form 7–2565), which allows us to establish compliance with Federal reclamation

law for those public entities that hold 40 acres or less and, thus, do not submit a standard RRA form because they are below the RRA forms submittal threshold. In addition, for those public entities that do not meet the exemption criteria, we must determine the proper rate to charge for Reclamation irrigation water deliveries. The Public Entity Information Sheet is disbursed at our discretion.

**Acreage limitation provisions applicable to religious or charitable organizations**—Some religious or charitable organizations that receive Reclamation irrigation water may believe that they are under the RRA forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these organizations may in fact have a different RRA forms submittal threshold than what they believe it to be depending on whether these organizations meet all of the required criteria for full special application of the acreage limitations provisions to religious or charitable organizations [43 CFR 426.9(b)]. In addition, some organizations that (1) do not meet the criteria to be treated as a religious or charitable organization under the acreage limitation provisions, and (2) are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land), may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The Religious or Charitable Organization Identification Sheet (Form 7–2578) allows us to establish certain religious or charitable organizations' compliance with Federal reclamation law. The Religious or Charitable Organization Identification Sheet is disbursed at our discretion.

**Title of Collection:** Forms to Determine Compliance by Certain Landholders, 43 CFR part 426.

**Form Numbers:** Form 7–2536, Form 7–2537, Form 7–2565, and Form 7–2578.

**Type of Review:** Extension of a currently approved collection.

**Respondents/Affected Public:** Entity landholders, trusts, public entities, and religious or charitable organizations identified by Reclamation that are subject to the acreage limitation provisions of Federal reclamation law.

**Total Estimated Number of Annual Respondents:** 500.

**Total Estimated Number of Annual Responses:** 500.

*Estimated Completion Time per Response:* See table below.

*Total Estimated Number of Annual Burden Hours:* 72 hours.  
*Respondent's Obligation:* Mandatory.

*Frequency of Collection:* Annually.  
*Total Estimated Annual Nonhour Burden Cost:* None.

| Form No.                                           | Burden estimate per form (in minutes) | Number of respondents | Annual number of responses | Annual burden on respondents (in hours) |
|----------------------------------------------------|---------------------------------------|-----------------------|----------------------------|-----------------------------------------|
| Limited Recipient Identification Sheet .....       | 5                                     | 175                   | 175                        | 15                                      |
| Trust Information Sheet .....                      | 5                                     | 150                   | 150                        | 13                                      |
| Public Entity Information Sheet .....              | 15                                    | 100                   | 100                        | 25                                      |
| Religious or Charitable Identification Sheet ..... | 15                                    | 75                    | 75                         | 19                                      |
| Totals .....                                       | .....                                 | 500                   | 500                        | 72                                      |

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Dated: August 9, 2017.

**Ruth Welch,**

*Director, Policy and Administration.*

[FR Doc. 2017-21098 Filed 9-29-17; 8:45 am]

**BILLING CODE 4332-90-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

[RR83550000, 17XR0680A1, RX.31580001.0090104; OMB Control Number 1006-0006]

#### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Certification Summary Form and Reporting Summary Form for Acreage Limitation, 43 CFR Part 426 and 43 CFR Part 428

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation (Reclamation), are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before November 1, 2017.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or via facsimile to (202) 395-5806. Please provide a copy of your comments to Stephanie McPhee, Bureau of

Reclamation, 84-55000, P.O. Box 25007, Denver, CO 80225-0007; or via email to [smcphree@usbr.gov](mailto:smcphree@usbr.gov). Please reference OMB Control Number 1006-0006 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Stephanie McPhee, Bureau of Reclamation, by email at [smcphree@usbr.gov](mailto:smcphree@usbr.gov), or by telephone at (303) 445-2897. You may also view the information collection request at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on December 21, 2016 (81 FR 93711). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of Reclamation; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might Reclamation enhance the quality, utility, and clarity of the information to be collected; and (5) how might Reclamation minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your

address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract:** This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. The forms in this information collection are to be used by district offices to summarize individual landholder (direct or indirect landowner or lessee) and farm operator certification and reporting forms. This information allows us to establish water user compliance with Federal reclamation law.

**Title of Collection:** Certification Summary Form and Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

**Form Numbers:** Form 7-21SUMM-C and Form 7-21SUMM-R.

**Type of Review:** Extension of a currently approved collection.

**Respondents/Affected Public:** Contracting entities that are subject to the acreage limitation provisions of Federal reclamation law.

**Total Estimated Number of Annual Respondents:** 177.

**Total Estimated Number of Annual Responses:** 221.

**Estimated Completion Time per Response:** See table below.

**Total Estimated Number of Annual Burden Hours:** 8,840 hours.

**Respondent's Obligation:** Mandatory.  
**Frequency of Collection:** Annually.

*Total Estimated Annual Nonhour  
Burden Cost: None.*

| Form No.                                          | Burden estimate per form (in minutes) | Number of respondents | Annual number of responses | Annual burden on respondents (in hours) |
|---------------------------------------------------|---------------------------------------|-----------------------|----------------------------|-----------------------------------------|
| 7-21SUMM-C and associated tabulation sheets ..... | 40                                    | 169                   | 211                        | 8,440                                   |
| 7-21SUMM-R and associated tabulation sheets ..... | 40                                    | 8                     | 10                         | 400                                     |
| Totals .....                                      | .....                                 | 177                   | 221                        | 8,840                                   |

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: August 9, 2017.

**Ruth Welch,**

*Director, Policy and Administration.*

[FR Doc. 2017-21095 Filed 9-29-17; 8:45 am]

**BILLING CODE 4332-90-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

[RR02030000, 17XR0687NA, RX18527906. 6000000]

### Notice To Reschedule Meeting Dates and Extend Comment Period for the Sites Reservoir Project Draft Environmental Impact Report/ Environmental Impact Statement and Draft Feasibility Report, Sites, California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice to reschedule meeting dates and extend public comment period.

**SUMMARY:** The Bureau of Reclamation, as the National Environmental Policy Act (NEPA) Federal lead agency, and the Sites Project Authority, as the California Environmental Quality Act (CEQA) State lead agency, have rescheduled the public meetings dates and have extended the public comment period for the Sites Reservoir Project Draft Environmental Impact Report/ Environmental Impact Statement (Draft EIR/EIS) and Draft Feasibility Report (Draft FR).

**DATES:** The comment period for the Draft EIR/EIS and Draft FR that published August 18, 2017, at 82 FR 39454, is extended. Submit written comments on or before January 15, 2018.

Two public meetings have been rescheduled to receive oral or written

comments regarding environmental effects. The new meeting dates are:

- Tuesday, December 5, 2017, 1:00 p.m.–3:00 p.m., Sacramento, CA.
- Thursday, December 7, 2017, 6:00 p.m.–8:00 p.m., Maxwell, CA.

Each meeting will begin with a 1-hour open house to view project information and interact with the project team.

**ADDRESSES:** Send written comments on the Draft EIR/EIS or Draft FR to DEIR/ EIS Comments, Sites Project Authority, P.O. Box 517, Maxwell, CA 95955, or email to [EIR-EIS-Comments@SitesProject.org](mailto:EIR-EIS-Comments@SitesProject.org).

The public meetings will be held at the following locations:

- Sacramento—Embassy Suites, 100 Capitol Mall, Old Sacramento Ballroom, Sacramento, CA 95814.
- Maxwell—Sites Project Authority, 122 Old Highway 99 West, Maxwell, CA 95955.

Electronic CD copies of the Draft EIR/ EIS may be requested from Sites Project Authority, at (530) 410-8250, or at [EIR-EIS-Comments@SitesProject.org](mailto:EIR-EIS-Comments@SitesProject.org). The Draft EIR/EIS is also accessible from the following Web site: [https://www.usbr.gov/mp/nepa/nepa\\_projdetails.cfm?project\\_ID=29024](https://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?project_ID=29024).

Copies of the Draft EIR/EIS are available for public review at the following locations:

1. Sites Project Authority, 122 Old Highway 99 West, Maxwell, CA 95955
2. Bureau of Reclamation, Mid-Pacific Region, Regional Library, 2800 Cottage Way, Sacramento, CA 95825
3. Sacramento Public Library, Central Branch, 828 I Street, Sacramento, CA 95814
4. Colusa County Free Library, Main Branch, 738 Market Street, Colusa, CA 95932
5. Glenn County Public Library, Willows Branch, 201 N. Lassen Street, Willows, CA 95988
6. Tehama County Library, Red Bluff Branch, 645 Madison Street, Red Bluff, CA 96080

**FOR FURTHER INFORMATION CONTACT:** Please contact Mr. Michael Dietl,

Bureau of Reclamation, at (916) 978-5070, or via email at [mdietl@usbr.gov](mailto:mdietl@usbr.gov); or Mr. Rob Thomson, Sites Project Authority, at (530) 438-2309, or via email at [EIR-EIS-Comments@SitesProject.org](mailto:EIR-EIS-Comments@SitesProject.org).

**SUPPLEMENTARY INFORMATION:** The 154-day Draft EIR/EIS public review period provides an opportunity for regulatory agencies and the public to comment on the adequacy and completeness of the environmental analyses and proposed mitigation measures, helping inform project development.

If special assistance is required at the public meetings, please contact Mr. Michael Dietl at (916) 978-5070; or via email at [mdietl@usbr.gov](mailto:mdietl@usbr.gov). Please notify Mr. Dietl as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TTY) is available at (800) 877-8339.

**Public Disclosure.** Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 12, 2017.

**Federico Barajas,**

*Deputy Regional Director, Mid-Pacific Region.*

[FR Doc. 2017-21084 Filed 9-29-17; 8:45 am]

**BILLING CODE 4332-90-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation**

[RR04073000, XXXR4081X3,  
RX.05940913.7000000]

**Glen Canyon Dam Adaptive  
Management Work Group Charter  
Renewal**

**AGENCY:** Bureau of Reclamation,  
Interior.

**ACTION:** Notice of charter renewal.

**SUMMARY:** Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the charter for the Glen Canyon Dam Adaptive Management Work Group. The purpose of the Adaptive Management Work Group is to provide advice and recommendations to the Secretary concerning the operation of Glen Canyon Dam and the exercise of other authorities pursuant to applicable Federal law.

**FOR FURTHER INFORMATION CONTACT:** Linda Whetton, 801-524-3880, [lwhetton@usbr.gov](mailto:lwhetton@usbr.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92-463, as amended). The certification of renewal is published below.

**Certification**

I hereby certify that Charter renewal of the Glen Canyon Dam Adaptive Management Work Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

**Ryan K. Zinke,**  
*Secretary of the Interior.*

[FR Doc. 2017-21091 Filed 9-29-17; 8:45 am]

**BILLING CODE** 4332-90-P

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation**

[RR04084000, XXXR4081X1,  
RN.20350010.REG0000]

**Colorado River Basin Salinity Control  
Advisory Council Notice of Public  
Meeting**

**AGENCY:** Bureau of Reclamation,  
Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Bureau of Reclamation is publishing this notice to announce that a Federal Advisory Committee meeting of the Colorado River Basin Salinity

Control Council (Council) will take place.

**DATES:** The meeting will be held on Wednesday, October 25, 2017, at 8:30 a.m. and adjourn at approximately 12:00 p.m.

**ADDRESSES:** The meeting will be held at the California State Capital, 1315 10th Street, Sacramento, California.

**FOR FURTHER INFORMATION CONTACT:** Kib Jacobson, telephone (801) 524-3753; facsimile (801) 524-3847; email at [kjacobson@usbr.gov](mailto:kjacobson@usbr.gov).

**SUPPLEMENTARY INFORMATION:** The meeting of the Council is being held under the provisions of the Federal Advisory Committee Act of 1972. The Council was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93-320) (Act) to receive reports and advise Federal agencies on implementing the Act.

*Purpose of the Meeting:* The purpose of the meeting is to discuss the accomplishments of Federal agencies and make recommendations on future activities to control salinity.

*Agenda:* Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities, the contents of the reports, and the Basin States Program created by Public Law 110-246, which amended the Act.

*Meeting Accessibility/Special Accommodations:* The meeting is open to the public and seating is on a first-come basis. Individuals requiring special accommodations to access the public meeting should contact Mr. Kib Jacobson by email at [kjacobson@usbr.gov](mailto:kjacobson@usbr.gov), or by telephone at (801) 524-3753, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

*Public Disclosure of Comments:* To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To allow full consideration of information by Council members, written notice must be provided to Mr. Kib Jacobson,

Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 8100, Salt Lake City, Utah 84138-1147; email at [kjacobson@usbr.gov](mailto:kjacobson@usbr.gov); facsimile (801) 524-3847; at least five (5) days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 16, 2017.

**Brent Rhees,**

*Regional Director, Upper Colorado Region.*

[FR Doc. 2017-21070 Filed 9-29-17; 8:45 am]

**BILLING CODE** 4332-90-P

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation**

[RR83550000, 17XR0680A1,  
RX.31580001.0090104; OMB Control  
Number 1006-0005]

**Agency Information Collection  
Activities; Submission to the Office of  
Management and Budget for Review  
and Approval; "Individual Landholder's  
and Farm Operator's Certification and  
Reporting Forms for Acreage  
Limitation, 43 CFR Part 426 and 43  
CFR Part 428"**

**AGENCY:** Bureau of Reclamation,  
Interior.

**ACTION:** Notice of information collection;  
request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation (Reclamation), are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before November 1, 2017.

**ADDRESSES:** Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or via facsimile to (202) 395-5806. Please provide a copy of your comments to Stephanie McPhee, Bureau of Reclamation, 84-55000, P.O. Box 25007, Denver, CO 80225-0007; or via email to

[smcphoe@usbr.gov](mailto:smcphoe@usbr.gov). Please reference OMB Control Number 1006–0005 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Stephanie McPhee, Bureau of Reclamation, by email at [smcphoe@usbr.gov](mailto:smcphoe@usbr.gov), or by telephone at (303) 445–2897. You may also view the information collection request at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on December 21, 2016 (81 FR 93708). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of Reclamation; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might Reclamation enhance the quality, utility, and clarity of the information to be collected; and (5) how might Reclamation minimize the burden of this collection on the respondents,

including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract:** This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. This information collection requires certain landholders (direct or indirect landowners or lessees) and farm operators to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. The forms in this information collection are submitted to districts that use the information to establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. In addition, forms are submitted by certain farm operators to provide information concerning the services they provide and the nature of their farm operating arrangements. All landholders whose entire westwide landholdings total 40 acres or less are

exempt from the requirement to submit RRA forms. Landholders who are “qualified recipients” have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold category where the land is held. Only farm operators who provide multiple services to more than 960 acres held in trusts or by legal entities are required to submit forms.

**Title of Collection:** Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

**OMB Control Number:** 1006–0005.

**Form Numbers:** Form 7–2180, Form 7–2180EZ, Form 7–2181, Form 7–2184, Form 7–2190, Form 7–2190EZ, Form 7–2191, Form 7–2194, Form 7–21TRUST, Form 7–21PE, Form 7–21PE–IND, Form 7–21FARMOP, Form 7–21VERIFY, Form 7–21FC, Form 7–21XS, Form 7–21XSINAQ, Form 7–21CONT–I, Form 7–21CONT–L, Form 7–21CONT–O, and Form 7–21INFO.

**Type of Review:** Extension of a currently approved collection.

**Respondents/Affected Public:** Landholders and farm operators of certain lands in our projects, whose landholdings exceed specified RRA forms submittal thresholds.

**Total Estimated Number of Annual Respondents:** 13,960.

**Total Estimated Number of Annual Responses:** 14,239.

**Estimated Completion Time per Response:** See table below.

**Total Estimated Number of Annual Burden Hours:** 10,437 hours.

**Respondent's Obligation:** Mandatory.

**Frequency of Collection:** Annually.

**Total Estimated Annual Nonhour Burden Cost:** None.

| Form No.              | Burden estimate per form (in minutes) | Number of respondents | Annual number of responses | Annual burden on respondents (in hours) |
|-----------------------|---------------------------------------|-----------------------|----------------------------|-----------------------------------------|
| Form 7–2180 .....     | 60                                    | 3,595                 | 3,667                      | 3,667                                   |
| Form 7–2180EZ .....   | 45                                    | 373                   | 380                        | 285                                     |
| Form 7–2181 .....     | 78                                    | 1,050                 | 1,071                      | 1,392                                   |
| Form 7–2184 .....     | 45                                    | 32                    | 33                         | 25                                      |
| Form 7–2190 .....     | 60                                    | 1,601                 | 1,633                      | 1,633                                   |
| Form 7–2190EZ .....   | 45                                    | 96                    | 98                         | 74                                      |
| Form 7–2191 .....     | 78                                    | 777                   | 793                        | 1,031                                   |
| Form 7–2194 .....     | 45                                    | 4                     | 4                          | 3                                       |
| Form 7–21PE .....     | 75                                    | 135                   | 138                        | 173                                     |
| Form 7–21PE–IND ..... | 12                                    | 4                     | 4                          | 1                                       |
| Form 7–21TRUST .....  | 60                                    | 694                   | 708                        | 708                                     |
| Form 7–21VERIFY ..... | 12                                    | 5,069                 | 5,170                      | 1,034                                   |
| Form 7–21FC .....     | 30                                    | 214                   | 218                        | 109                                     |
| Form 7–21XS .....     | 30                                    | 144                   | 147                        | 74                                      |
| Form 7–21FARMOP ..... | 78                                    | 172                   | 175                        | 228                                     |
| Totals .....          | .....                                 | 13,960                | 14,239                     | 10,437                                  |

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: August 9, 2017.

**Ruth Welch,**

*Director, Policy and Administration.*

[FR Doc. 2017-21096 Filed 9-29-17; 8:45 am]

BILLING CODE 4332-90-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1387-1391 (Preliminary)]

### Polyethylene Terephthalate (PET) Resin From Brazil, Indonesia, Korea, Pakistan, and Taiwan Institution of Antidumping 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 duty investigation Nos. 731-TA-1387-1391 (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 polyethylene terephthalate (PET) resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan, currently provided for in subheadings 3907.61.00 and 3907.69.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation, the Commission must reach preliminary determinations in antidumping duty investigations in 45 days, or in this case by November 13, 2017. The Commission's views must be transmitted to Commerce within five business days thereafter, or by November 20, 2017.

**DATES:** September 26, 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 these investigations 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 section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to petitions filed on September 26, 2017, by DAK Americas LLC, Charlotte, North Carolina; Indorama Ventures USA, Inc., Decatur, Alabama; M&G Polymers USA, LLC, Houston, Texas; and Nan Ya Plastics Corporation, America, Lake City, South Carolina.

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 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 Tuesday, October 17, 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](mailto:William.bishop@usitc.gov) and [Sharon.bellamy@usitc.gov](mailto:Sharon.bellamy@usitc.gov) (DO NOT FILE ON EDIS) on or before Friday, October 13, 2017. Parties in support of the imposition of 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 October 20, 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://www.usitc.gov/secretary/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf), 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.

**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: September 26, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–21010 Filed 9–29–17; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Gas Spring Nailer Products and Components Thereof*, DN 3259; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Kyocera Senco Brands Inc. on September 26, 2017. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States,

the sale for importation, and the sale within the United States after importation of certain gas spring nailer products and components thereof. The complaint names as a respondent Hitachi Koki U.S.A., Limited of Braselton, GA. The complainant requests that the Commission issue a limited exclusion, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines

stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3259") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures<sup>1</sup>). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation 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 this or a related proceeding, 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,<sup>2</sup> solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.<sup>3</sup>

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

<sup>1</sup> Handbook for Electronic Filing Procedures: [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf).

<sup>2</sup> All contract personnel will sign appropriate nondisclosure agreements.

<sup>3</sup> Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

Issued: September 26, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–21020 Filed 9–29–17; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–672–673 (Fourth Review)]

### Silicomanganese From China and Ukraine: Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the antidumping duty orders on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted October 2, 2017. To be assured of consideration, the deadline for responses is November 1, 2017. Comments on the adequacy of responses may be filed with the Commission by December 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), 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 proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On October 31, 1994, the Department of Commerce (“Commerce”) suspended an antidumping duty investigation on imports of silicomanganese from Ukraine (59 FR 60951, November 29, 1994). On December 22, 1994, Commerce issued an antidumping duty

order on imports of silicomanganese from China (59 FR 66003). Following first five-year reviews by Commerce and the Commission, effective February 16, 2001, Commerce issued a continuation of the antidumping duty order on imports of silicomanganese from China and of the suspended investigation on imports of silicomanganese from Ukraine (66 FR 10669). On July 19, 2001, the Government of Ukraine requested termination of the suspension agreement on silicomanganese from Ukraine and, effective September 17, 2001, Commerce issued an antidumping duty order on imports of silicomanganese from Ukraine (66 FR 43838, August 21, 2001). Following second five-year reviews by Commerce and the Commission, effective September 14, 2006, Commerce issued a continuation of the antidumping duty orders on imports of silicomanganese from China and Ukraine (71 FR 54272). Following the third five-year reviews by Commerce and the Commission, effective November 8, 2012, Commerce issued a continuation of the antidumping duty orders on imports of silicomanganese from China and Ukraine (77 FR 66956). The Commission is now conducting fourth five-year reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission’s Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission’s determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original

determinations, its full first five-year review determinations, its expedited second five-year review determinations, and its full third five-year review determinations, the Commission defined the *Domestic Like Product* as all silicomanganese, coextensive with Commerce’s scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, its expedited second five-year review determinations, and its full third five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of silicomanganese.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the proceeding and public service list.**—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission’s rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission’s designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval

to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Deputy Agency Ethics Official, at 202–205–3408.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification.**—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding 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 information submitted in response to this request for information and throughout this proceeding or other proceeding 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 this or a related proceeding, 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.

**Written submissions.**—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 1, 2017. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited

or full reviews. The deadline for filing such comments is December 7, 2017. 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://www.usitc.gov/secretary/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 17–5–396, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

**Inability to provide requested information.**—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

**Information to be provided in response to this notice of institution:** If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject*

*Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2011.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2016, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2016 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports

and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2016 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2011, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production

facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 26, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–20971 Filed 9–29–17; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On September 22, 2017, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Minnesota in the lawsuit entitled *United States v. City of Cass Lake*, Civil Action No. 17–4367.

In this action, the United States brought claims against the City of Cass Lake, Minnesota for response costs and injunctive relief associated with the release and threatened release of hazardous substances from facilities at and near the St. Regis Paper Company Superfund Site ("Site") in Cass Lake, Minnesota, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* ("CERCLA"). The proposed Consent Decree requires Defendant to make a payment of \$30,000 to reimburse EPA past costs at the Site, with the settlement amount based on Defendant's limited ability to

pay. The proposed Consent Decree also requires the City to cooperate with EPA and any parties performing cleanup work at the Site and to assist with implementing any necessary land use restrictions.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. City of Cass Lake*, D.J. Ref. No. 90-11-3-06790/3. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| To submit comments: | Send them to:                                                                                 |
|---------------------|-----------------------------------------------------------------------------------------------|
| By email .....      | <a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .            |
| By mail .....       | Assistant Attorney General,<br>U.S. DOJ—ENRD, P.O.<br>Box 7611, Washington, DC<br>20044-7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$17.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is \$8.00.

**Randall M. Stone,**

*Acting Assistant Section Chief,  
Environmental Enforcement Section,  
Environment and Natural Resources Division.*

[FR Doc. 2017-21040 Filed 9-29-17; 8:45 am]

BILLING CODE 4410-15-P

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Labor Surplus Area Classification

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year (FY) 2018.

**DATES:** The annual list of labor surplus areas is effective October 1, 2017, for all states, the District of Columbia, and Puerto Rico.

**FOR FURTHER INFORMATION CONTACT:** Samuel Wright, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Avenue NW., Room C-4514, Washington, DC 20210. Telephone: (202) 693-2870 (This is not a toll-free number) or email [wright.samuel.e@dol.gov](mailto:wright.samuel.e@dol.gov).

**SUPPLEMENTARY INFORMATION:** The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subpart A. These regulations require the Employment and Training Administration (ETA) to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations, and to publish annually a list of labor surplus areas. Pursuant to those regulations, ETA is hereby publishing the annual list of labor surplus areas.

In addition, the regulations provide exceptional circumstance criteria for classifying labor surplus areas when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

#### Eligible Labor Surplus Areas

A Labor Surplus Area (LSA) is a civil jurisdiction that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states during the same 24-month reference period. ETA uses only official unemployment estimates provided by the Bureau of Labor Statistics in making these classifications. The average unemployment rate for all states includes data for the Commonwealth of Puerto Rico. LSA classification criteria stipulate a civil jurisdiction must have a "floor unemployment rate" of 6.0% or higher to be classified a LSA. Any civil jurisdiction that has a "ceiling unemployment rate" of 10% or higher is classified a LSA.

Civil jurisdictions are defined as follows:

1. A city of at least 25,000 population on the basis of the most recently available estimates from the Bureau of the Census; or
2. A town or township in the States of Michigan, New Jersey, New York, or Pennsylvania of 25,000 or more population and which possess powers

and functions similar to those of cities; or

3. All counties, except for those counties which contain any type of civil jurisdictions defined in "1" or "2" above; or

4. A "balance of county" consisting of a county less any component cities and townships identified in "1" or "2" above; or

5. A county equivalent which is a town in the States of Connecticut, Massachusetts, and Rhode Island, or a municipio in the Commonwealth of Puerto Rico.

#### Procedures for Classifying Labor Surplus Areas

The Department of Labor (DOL) issues the LSA list on a fiscal year basis. The list becomes effective each October 1, and remains in effect through the following September 30. The reference period used in preparing the current list was January 2014 through December 2016. The national average unemployment rate (including Puerto Rico) during this period is rounded to 5.12 percent. Twenty percent higher than the national unemployment rate during this period is rounded to 6.14 percent but 6.1453 percent (since 5 is the 3rd place behind the decimal) will be used for the unemployment qualifying rate. Therefore, areas included on the FY 2018 LSA list had an unemployment rate for the reference period of 6.1453 percent or higher. To ensure that all areas classified as labor surplus meet the requirements, when a city is part of a county and meets the unemployment qualifier as a LSA, that city is identified in the LSA list, the balance of county, not the entire county, will be identified as a LSA if the balance of county also meets the LSA unemployment criteria. The FY 2018 LSA list, statistical data on the current and some previous year's LSAs are available at ETA's LSA Web site <http://www.doleta.gov/programs/lssa.cfm>.

#### Petition for Exceptional Circumstance Consideration

The classification procedures also provide criteria for the designation of LSAs under exceptional circumstances criteria. These procedures permit the regular classification criteria to be waived when an area experiences a significant increase in unemployment which is not temporary or seasonal and which was not reflected in the data for the 2-year reference period. Under the program's exceptional circumstance procedures, LSA classifications can be made for civil jurisdictions, Metropolitan Statistical Areas or Combined Statistical Areas, as defined

by the U.S. Office of Management and Budget. In order for an area to be classified as a LSA under the exceptional circumstance criteria, the state workforce agency must submit a petition requesting such classification to the Department of Labor's ETA. The current criteria for an exceptional circumstance classification are,

(1) an area's unemployment rate is at least 6.1453 percent for each of the three most recent months;

(2) a projected unemployment rate of at least 6.1453 percent for each of the next 12 months; and

(3) documentation that the exceptional circumstance event has occurred. The state workforce agency may file petitions on behalf of civil jurisdictions, Metropolitan Statistical Areas, or Micropolitan Statistical Areas.

The addresses of state workforce agencies are available on the ETA Web site at: <http://www.doleta.gov/programs/lsa.cfm>. State Workforce Agencies may submit petitions in electronic format to [wright.samuel.e@dol.gov](mailto:wright.samuel.e@dol.gov), or in hard copy to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue NW., Room C-4514, Washington, DC 20210, Attention Samuel Wright. Data collection for the petition is approved under OMB 1205-0207, expiration date March 31, 2018.

Signed at Washington, DC

**Byron Zuidema,**

*Deputy Assistant Secretary for Employment and Training.*

[FR Doc. 2017-20977 Filed 9-29-17; 8:45 am]

BILLING CODE 4510-FN-P

## DEPARTMENT OF LABOR

### Office of the Secretary

#### **Agency Information Collection Activities; Submission for OMB Review; Comment Request; "Suspension of Pension Benefits Pursuant to Regulations 29 CFR 2530.203-3"**

**ACTION:** Notice.

**SUMMARY:** On September 30, 2017, the Department of Labor (DOL) will submit the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Suspension of Pension Benefits Pursuant to Regulations 29 CFR 2530.203-3," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995

(PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before November 1, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201707-1210-002](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201707-1210-002) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

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

Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Suspension of Pension Benefits Pursuant to Regulations 29 CFR 2530.203-3 information collection. Employee Retirement Income Security Act (ERISA) section 203(a)(3)(B), 29 U.S.C. 1103(a)(3)(B), and its implementing regulations govern the circumstances under which a pension plan may suspend pension benefit payments to a retiree who returns to work or of a participant who continues to work beyond normal retirement age. In order for a plan to suspend benefits, it must notify the affected retiree or participant during the first calendar month or payroll period in which the plan withholds payment that benefits are suspended. The notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be

found, *i.e.*, 29 CFR 2530.203-3. The suspension notification must also inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits. ERISA section 203 authorizes this information collection. *See* 29 U.S.C. 1103.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210-0048.

The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 22, 2017 (82 FR 23303).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210-0048. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–EBSA.

*Title of Collection:* Suspension of Pension Benefits Pursuant to Regulations 29 CFR 2530.203–3.

*OMB Control Number:* 1210–0048.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 39,457.

*Total Estimated Number of Responses:* 171,221.

*Total Estimated Annual Time Burden:* 132,639 hours.

*Total Estimated Annual Other Costs Burden:* \$46,773.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: September 26, 2017.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2017–21035 Filed 9–29–17; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### **Agency Information Collection Activities; Submission for OMB Review; Comment Request; Powered Platforms for Building Maintenance Standard**

**ACTION:** Notice.

**SUMMARY:** On September 30, 2017, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, “Powered Platforms for Building Maintenance Standard,” to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before November 1, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201707-1218-006](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201707-1218-006) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

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

Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Powered Platforms for Building Maintenance Standard information collection. Requirements codified in regulations 29 CFR 1910.66 provide that an Occupational Safety and Health Act (OSH Act) covered employer subject to the Standard develop and implement a written emergency action plan for each type of powered platform operation. The plan must explain the emergency procedures to follow upon encountering a disruption of the power supply, equipment failure, or other emergency. More specifically, the Standard requires the employer to develop and maintain a written emergency action plan and work plan for training; affix a load rating plate to each suspended unit; label each emergency electric operating device with instructions for use; attach a tag to one of the fastenings holding a suspension wire rope; and prepare and maintain a written certification record of the inspection and testing of each building-support structure component of a powered platform, powered platform facility, and suspension wire rope. OSH Act sections 2 and 8 authorize this information collection. See 29 U.S.C. 651, 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a

collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0121.

OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 22, 2017 (82 FR 23312).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0121. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–OSHA.

*Title of Collection:* Powered Platforms for Building Maintenance Standard.

*OMB Control Number:* 1218–0121.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 900.

*Total Estimated Number of Responses:* 181,612.

*Total Estimated Annual Time Burden:* 130,763 hours.

*Total Estimated Annual Other Costs Burden:* \$0.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: September 26, 2017.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2017-21036 Filed 9-29-17; 8:45 am]

**BILLING CODE 4510-26-P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

#### Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Thursday, November 9, 2017. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The meeting will be held in Meeting Rooms 1, 2, and 3 of the Janet Norwood Conference and Training Center. The schedule and agenda for the meeting are as follows:

- 8:30 a.m. Registration
- 9:00 a.m. Commissioner's welcome and review of agency developments
- 9:45 a.m. Changes to the North American Industry Classification System (NAICS) and the Standard Occupational Classification (SOC) system
- 10:30 a.m. Data Collection Tools with a Data User Focus and Improving "At a Glance" Web pages
- 11:30 a.m. Comparing industry indexes between the International Price Program (IPP) and the Producer Price Program (PPI)
- 1:15 p.m. Data Repository and External Access initiative
- 2:15 p.m. Publicizing revamped modeled wages
- 3:30 p.m. BLS Public Data Application Programming Interface (API)
- 4:30 p.m. Meeting wrap-up

The meeting is open to the public. Any questions concerning the meeting should be directed to Kathy Mele, Data Users Advisory Committee, on 202.691.6102. Individuals who require special accommodations should contact Ms. Mele at least two days prior to the meeting date.

Signed at Washington, DC, this 26th day of September 2017.

**Kimberley D. Hill,**

*Chief, Division of Management Systems.*

[FR Doc. 2017-20979 Filed 9-29-17; 8:45 am]

**BILLING CODE 4510-24-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2007-0042]

#### TUV Rheinland of North America, Inc.: Grant of Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces its final decision to expand the scope of recognition for TUV Rheinland of North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition takes place on October 2, 2017.

#### FOR FURTHER INFORMATION CONTACT:

Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210; telephone: (202) 693-2110; email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov). OSHA's Web page includes information about the NRTL Program (see <http://www.osha.gov/dts/otpcanrtl/index.html>).

#### SUPPLEMENTARY INFORMATION:

##### I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of TUV Rheinland of North America, Inc. (TUVRNA), as a NRTL. TUVRNA's expansion covers the addition of one test standard to its scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an

acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The Agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at <http://www.osha.gov/dts/otpcanrtl/index.html>.

TUVRNA submitted an application, dated July 15, 2016 (OSHA-2007-0042-0024), to expand its recognition to include one additional test standard. OSHA staff performed a comparability analysis and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing TUVRNA's expansion application in the **Federal Register** on May 22, 2017 (82 FR 22314). The Agency requested comments by June 6, 2017, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of TUVRNA's scope of recognition.

To obtain or review copies of all public documents pertaining to TUVRNA's application, go to [www.regulations.gov](http://www.regulations.gov) or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3655, Washington, DC 20210. Docket No. OSHA-2007-0042 contains all materials in the record concerning TUVRNA's recognition.

##### II. Final Decision and Order

OSHA staff examined TUVRNA's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this

evidence, OSHA finds that TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant TUVRNA's scope of recognition. OSHA limits the expansion of TUVRNA's recognition to testing and certification of products for demonstration of conformance to the test standard listed in Table 1 below.

**TABLE 1—LIST OF APPROPRIATE TEST STANDARD FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION**

| Test standard | Test standard title                        |
|---------------|--------------------------------------------|
| UL 2108 ...   | Standard for Low Voltage Lighting Systems. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standard listed above as an American National Standard. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1-0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

#### A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, TUVRNA must abide by the following conditions of the recognition:

1. TUVRNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. TUVRNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. TUVRNA must continue to meet the requirements for recognition, including all previously published conditions on TUVRNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of TUVRNA, subject to the limitation and conditions specified above.

### III. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 22, 2017.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2017-20980 Filed 9-29-17; 8:45 am]

**BILLING CODE 4510-26-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2013-0030]

#### International Association of Plumbing and Mechanical Officials EGS: Grant of Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces its final decision to expand the scope of recognition for International Association of Plumbing and Mechanical Officials EGS as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition takes place on October 2, 2017.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: [meilinger.frank2@dol.gov](mailto:meilinger.frank2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of

Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, telephone: (202) 693-2110; email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov). OSHA's Web page includes information about the NRTL Program (see <http://www.osha.gov/dts/otpcanrtl/index.html>).

### SUPPLEMENTARY INFORMATION:

#### I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of International Association of Plumbing and Mechanical Officials EGS (IAPMO) as a NRTL. IAPMO's expansion covers the addition of four test standards to its scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The Agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at: <http://www.osha.gov/dts/otpcanrtl/index.html>.

IAPMO submitted an application, dated January 12, 2016, (OSHA-2013-0030-0006) to expand its recognition to include eight additional test standards. OSHA staff performed a comparability analysis and reviewed other pertinent information. OSHA staff performed an on-site review of IAPMO's testing facility on March 1-2, 2016, in relation to this application, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. IAPMO addressed these issues sufficiently, and

OSHA staff determined that OSHA should grant the application to expand IAPMO's NRTL recognition to include four of the eight requested standards.

OSHA published the preliminary notice announcing IAPMO's expansion application in the **Federal Register** on March 15, 2017 (82 FR 13868). The Agency requested comments by March 30, 2017, and received three comments in response to this notice. One comment supported IAPMO's expansion application (OSHA-2013-0030-0010), while the other two (OSHA-2013-0030-0008 and OSHA-2013-0030-0009) were not specifically related to it, but rather questioned the funding and oversight of the NRTL Program more generally. Because the comments were anonymous, the Agency could not respond directly to the commenters.

However, the Agency reiterates that its NRTL procedures are governed by 29 CFR 1910.7 and notes that these procedures serve simply to protect workers under the OSH Act by allowing NRTLs to certify that a particular product complies with the requirements of one or more appropriate product safety test standards. OSHA now is proceeding with this final notice to grant expansion of IAPMO's scope of recognition.

To obtain or review copies of all public documents pertaining to IAPMO's application, go to: <http://www.regulations.gov> or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3653, Washington, DC 20210. Docket No. OSHA-2013-0030 contains

all materials in the record concerning IAPMO's recognition.

## II. Final Decision and Order

OSHA staff examined IAPMO's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that IAPMO meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant IAPMO's scope of recognition. OSHA limits the expansion of IAPMO's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1 below.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN IAPMO'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title                                       |
|---------------|-----------------------------------------------------------|
| UL 875 .....  | Standard for Electric Dry-Bath Heaters.                   |
| UL 979 .....  | Standard for Water Treatment Appliances.                  |
| UL 1241 ..... | Standard for Junction Boxes for Swimming Pool Luminaires. |
| UL 1261 ..... | Standard for Electric Water Heaters for Pools and Tubs.   |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, OSHA may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1-0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

### A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, IAPMO must abide by the following conditions of the recognition:

1. IAPMO must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel,

and of any major change in its operations as a NRTL, and provide details of the change(s);

2. IAPMO must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. IAPMO must continue to meet the requirements for recognition, including all previously published conditions on IAPMO's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of IAPMO, subject to the limitation and conditions specified above.

## III. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 25, 2017.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2017-20982 Filed 9-29-17; 8:45 am]

**BILLING CODE 4510-26-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2014-0021]

#### General Working Conditions in Shipyard Employment; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in its General Working Conditions in Shipyard Employment Standards.

**DATES:** Comments must be submitted (postmarked, sent or received) by December 1, 2017.

#### ADDRESSES:

*Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

**Facsimile:** If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

**Mail, hand delivery, express mail, messenger, or courier service:** When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2014-0021, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3653, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., e.t.

**Instructions:** All submissions must include the Agency name and the OSHA docket number (OSHA-2014-0021) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

**Docket:** To read or download comments or other materials in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publically available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the ICR.

#### FOR FURTHER INFORMATION CONTACT:

Todd Owen or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693-2222.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2)(A)). This

program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The standard on General Working Conditions in Shipyard Employment (29 CFR part 1915, subpart F) covers provisions that address conditions and operations in shipyard employment that may produce hazards for workers. The subpart is comprised of 14 sections that include housekeeping; lighting; utilities; working alone; vessel radar and communication systems; lifeboats; medical services and first aid; sanitation; control of hazardous energy; safety color code for marking physical hazards; accident prevention signs and tags; retention of DOT markings, placards, and labels; motor vehicle safety equipment, operation and maintenance; and servicing multi-piece and single-piece rim wheels.

##### II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply. For example, by using automated or other technological information collection and transmission techniques.

##### III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in subpart F of the General Working Conditions in Shipyard Employment

Standard (29 CFR 1915). The Agency is proposing an adjustment decrease of 2,471 hours, from 101,376 to 98,905 hours. The decrease in hours is a result of updated data showing a decrease in the number of small to large establishments covered by the standard.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

**Type of Review:** Extension of a currently approved collection.

**Title:** General Working Conditions in Shipyard Employment Standard (29 CFR part 1915, subpart F)

**OMB Control Number:** 1218-0259.

**Affected Public:** Businesses or other for-profits.

**Number of Responses:** 285,653.

**Frequency of Responses:** On occasion.

**Average Time per Response:** Various.

**Estimated Total Burden Hours:** 98,905.

**Estimated Cost (Operation and Maintenance):** \$2,726.

#### IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA-2014-0021). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627.

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting

personal information such as social security numbers and dates of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publically available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

#### V. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on September 22, 2017.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2017–20981 Filed 9–29–17; 8:45 am]

**BILLING CODE 4510–26–P**

### LEGAL SERVICES CORPORATION

#### Sunshine Act Meeting

**DATE AND TIME:** The Legal Services Corporation's Board of Directors and its six committees will meet October 15–17, 2017. On Sunday, October 15, the first meeting will commence at 1:00 p.m., Eastern Daylight Time (EDT), with the meeting thereafter commencing promptly upon adjournment of the immediately preceding meeting. On Monday, October 16, the first meeting will commence at 8:30 a.m., EDT, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, October 17, the first meeting will commence at 8:00 a.m., EDT and will be followed by the closed session meeting of the Board of Directors that will commence promptly upon adjournment of the prior meeting.

**LOCATION:** The Sheraton Commander Hotel, 16 Garden Street, Cambridge, MA 02138.

**PUBLIC OBSERVATION:** Unless otherwise noted herein, the Board and all committee meetings will be open to 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

- Once connected to the call, your telephone line will be *automatically* "MUTED".

- To participate in the meeting during public comment press #6 to "UNMUTE" your telephone line, once you have concluded your comments please press \*6 to "MUTE" your line.

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 presiding Chair may solicit comments from the public.

### MEETING SCHEDULE

|                                                                            | Time *    |
|----------------------------------------------------------------------------|-----------|
| Sunday, October 15, 2017:                                                  |           |
| 1. Operations & Regulations Committee .....                                | 1:00 p.m. |
| 2. Delivery of Legal Services Committee.                                   |           |
| 3. Institutional Advancement Committee.                                    |           |
| 4. Communications Subcommittee of the Institutional Advancement Committee. |           |
| 5. Audit Committee.                                                        |           |
| Monday, October 16, 2017:                                                  |           |
| 1. Governance and Performance Review Committee .....                       | 8:30 a.m. |
| 2. Finance Committee.                                                      |           |
| Tuesday, October 17, 2017:                                                 |           |
| 1. Board of Directors .....                                                | 8:00 a.m. |

**STATUS OF MEETING:** Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC, and on a list of prospective funders.\*\*

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to consider and act on recommendation of new prospective donors and to receive a briefing on the donor report.\*\*

Audit Committee—Open, except that the meeting may be closed to the public to hear a briefing on the Office of Compliance and Enforcement's active enforcement matters.\*\*

A verbatim written transcript will be made of the closed session of the Board, Institutional Advancement Committee, and Audit Committee meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

\*\* Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of term "meeting" and, therefore, the requirements of the Sunshine Act do not apply

to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). See also 45 CFR 1622.2, 1622.3.

**Matters To Be Considered****October 15, 2017***Operations & Regulations Committee*

## Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of July 21, 2017
3. Consider and act on Commencing Rulemaking to Repeal 45 CFR part 1603—State Advisory Councils
  - Ron Flagg, General Counsel and Vice President for Legal Affairs
  - Stefanie Davis, Assistant General Counsel
  - Zoe Osterman, Law Fellow
4. Consider and act on Commencing Rulemaking to Adopt a new Touhy Rule for LSC Response Process for Subpoenas
  - Ron Flagg, General Counsel and Vice President for Legal Affairs
  - Stefanie Davis, Assistant General Counsel
  - Kristin Martin, Law Fellow
5. Report on Information Management and Ensuring Accuracy of Grantee Data
  - Carlos Manjarrez, Director, Office of Data Governance and Analysis
6. Public comment
7. Consider and act on other business
8. Consider and act on adjournment of meeting

**October 15, 2017***Delivery of Legal Services Committee*

## Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on July 20, 2017
3. Report on the status of LSC grantees impacted by Hurricanes Harvey, Irma and Maria
  - Lynn Jennings, Vice President for Grants Management
4. Presentation on revisions to Performance Area 4
  - Lynn Jennings, Vice President for Grants Management
5. Public comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the meeting

**October 15, 2017***Institutional Advancement Committee*

## Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting of July 21, 2017
3. Update on Leaders Council

- John G. Levi, Chairman of the Board
4. Development report
    - Nadia Elguindy, Director of Institutional Advancement
  5. Consider and act on expenditure of private funds to support Rural Summer Legal Corps
  6. Public Comment
  7. Consider and act on other business
  8. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

## Closed Session

9. Approval of minutes of the Committee's Closed Session meeting of July 21, 2017
10. Development activities report
11. Consider and act on motion to approve Leaders Council invitees
12. Consider and act on other business
13. Consider and act on motion to adjourn the meeting

*Communications Subcommittee of the Institutional Advancement Committee*

## Open Session

1. Approval of agenda
2. Approval of minutes of the Subcommittee's Open Session meeting of July 21, 2017
3. Communications analytics update
  - Carl Rauscher, Director of Communications and Media Relations
4. Public comment
5. Consider and act on other business
6. Consider and act on motion to adjourn the meeting

**October 15, 2017***Audit Committee*

## Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on July 20, 2017
3. Briefing of Office of Inspector General
  - John Seeba, Assistant Inspector General for Audits
4. Discussions with OIG pursuant to Section VIII A (3) and Section VIII (A) (4) of the Audit Committee Charter
5. Discussions with OIG, Management, and Castro and Company on the scope and plan for LSC's required annual audit, pursuant to Section VIII (A) (1) of the Committee Charter
  - John Seeba, Assistant Inspector General for Audit
  - David Richardson, Treasurer and Comptroller
6. Pursuant to Section VIII (C)(6) of the Committee Charter, review LSC's efforts, including training and

- education, to help ensure that LSC employees and grantees act ethically and safeguard LSC funds
- Ron Flagg, General Counsel and Vice President for Legal Affairs
  - Lynn Jennings, Vice President for Grants Management
  - Jeffrey Schanz, Inspector General
7. Management update regarding risk management
    - Ron Flagg, General Counsel and Vice President for Legal Affairs
  8. Briefing about follow-up by the Office of Compliance and Enforcement on referrals by the Office of Inspector General regarding audit reports and annual Independent Public audits of grantees
    - Lora Rath, Director of Compliance and Enforcement
    - John Seeba, Assistant IG for Audits
  9. Report on OIG referral trends
    - Lora Rath, Director, Office of Compliance and Enforcement
  10. Public comment
  11. Consider and act on other business
  12. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

## Closed Session

13. Approval of minutes of the Committee's Closed Session meeting of July 20, 2017
14. Briefing by the Office of Compliance and Enforcement on active enforcement matter(s) and follow-up to open investigation referrals from the Office of Inspector General
  - Lora Rath, Director of Compliance and Enforcement
15. Consider and act on adjournment of meeting

**October 16, 2017***Governance and Performance Review Committee*

## Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on July 20, 2017
3. Report on 2017 Board and Committee Evaluations
  - Carol Bergman, Vice President for Government Relations & Public Affairs
4. Prioritization of future projects for support with private funding
  - Jim Sandman, President
5. Report on transition
  - Carol Bergman, Vice President for Government Relations & Public Affairs
  - Ron Flagg, Vice President for Legal Affairs, General Counsel and Corporate Secretary
6. Report on foundation grants and LSC's research agenda

- Jim Sandman, President
- 7. Application of Sunshine Act to Evaluations of LSC Officers
  - Jim Sandman, President
  - Mark Freedman, Senior Associate General Counsel, Office of Legal Affairs
- 8. Consider and act on other business
- 9. Public comment
- 10. Consider and act on adjournment of meeting

**October 16, 2017***Finance Committee*

## Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session telephonic meeting on August 31, 2017
3. Presentation of LSC's Financial Reports for the eleven-month period ending August 31, 2017
  - David Richardson, Treasurer/Comptroller
4. Report on status of FY 2018 appropriations process
  - Carol Bergman, Vice President for Government Relations & Public Affairs
5. Consider and act on *Resolution #2017-XXX*, Temporary Operating Budget for FY 2018
  - David Richardson, Treasurer/Comptroller
6. Report on status of FY 2019 appropriations request
  - Carol Bergman, Director of Government Relations & Public Affairs
7. Public comment
8. Consider and act on other business
9. Consider and act on adjournment of meeting

**October 17, 2017***Board of Directors*

## Open Session

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's telephonic Open Session meeting of September 5, 2017
4. Chairman's Report
5. Members' Reports
6. President's Report
7. Update on state pro bono rule changes
8. Inspector General's Report
9. Consider and act on the report of the Operations and Regulations Committee
10. Consider and act on the report of the Delivery of Legal Services Committee
11. Consider and act on the report of the Institutional Advancement Committee

12. Consider and act on the report of the Audit Committee
13. Consider and act on the report of the Governance and Performance Review Committee
14. Consider and act on the report of the Finance Committee
15. Consider and act on *Resolution 2017-XXX*, in Recognition and Profound Appreciation of Distinguished Service by Mary E. McClymont
16. Public comment
17. Consider and act on other business
18. Consider and act on whether to authorize a closed session of the Board to address items listed below

## Closed Session

1. Approval of minutes of the Board's Closed Session meeting of July 22, 2017
2. Management briefing
3. Inspector General briefing
4. Consider and act on list of prospective Leaders Council members
5. Consider and act on General Counsel's report on potential and pending litigation involving LSC
6. Consider and act on motion to adjourn the 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](mailto:FR_NOTICE_QUESTIONS@lsc.gov).

**NON-CONFIDENTIAL MEETING MATERIALS:**

Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC Web site, at <http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session>.

**ACCESSIBILITY:** LSC complies with the

American's 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 who need 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](mailto: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: September 28, 2017.

**Katherine Ward,**

*Executive Assistant to the Vice President for Legal Affairs, General Counsel & Corporate Secretary.*

[FR Doc. 2017-21261 Filed 9-28-17; 4:15 pm]

**BILLING CODE 7050-01-P**

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[Notice: 17-070]**

**Earth Science Advisory Committee; Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Advisory Committee (ESAC). The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

**DATES:** Friday, October 27, 2017, 1:30 p.m.-3:00 p.m., Eastern Time.

**ADDRESSES:** This meeting will take place telephonically. You must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll free number 1-888-790-3444, passcode 6793991.

**FOR FURTHER INFORMATION CONTACT:**

KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-2355, fax (202) 358-2779, or [khenderson@nasa.gov](mailto:khenderson@nasa.gov).

The agenda for the meeting includes the following topic:

- Earth Science Program Annual Performance Review According to the Government Performance and Results Act Modernization Act.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2017-20978 Filed 9-29-17; 8:45 am]

**BILLING CODE 7510-13-P**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Document Number NASA 17-068]

**Notice of Information Collection****AGENCY:** National Aeronautics and Space Administration (NASA).**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** All comments should be submitted within 30 calendar days from the date of this publication.

**ADDRESSES:** Interested persons are invited to submit written comments regarding the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 7th Street NW., Washington, DC 20543. Attention: Desk Officer for NASA.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546, 202-358-1351, or email [Lori.Parker-1@nasa.gov](mailto:Lori.Parker-1@nasa.gov).

**SUPPLEMENTARY INFORMATION:****I. Abstract**

Information collection is for reports, other than financial, property, or patent, data or copyrights reports (covered under separate OMB Control numbers), required for effective management and administration of contracts with an estimated value of more than \$500,000, in support of NASA's mission.

**II. Method of Collection**

NASA collects this information electronically where feasible. NASA encourages recipients to use the latest computer technology in preparing documentation, but information may also be collected by mail or fax.

**III. Data**

**Title:** Reports requested for contracts with an estimated value greater than \$500,000.

**OMB Control Number:** 2700-0089.

**Type of review:** Extension of a currently approved OMB Control Number.

**Affected Public:** Businesses or other for-profit institutions.

**Estimated Number of Respondents:** 218.

**Total Number of Responses:** 436.  
**Estimated Time per Response:** 7 hours.

**Estimated Total Annual Burden Hours:** 3,052.

**Estimated Total Annual Cost:** \$180,068.

**IV. Request for Comments**

Comments are invited on—(1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Lori Parker,**  
*NASA PRA Clearance Officer.*

[FR Doc. 2017-20772 Filed 9-29-17; 8:45 am]

**BILLING CODE 7510-13-P****NATIONAL LABOR RELATIONS BOARD****Notice of Appointments of Individuals To Serve as Members of Performance Review Boards**

**AGENCY:** National Labor Relations Board.

**ACTION:** Appointment of individuals to serve as performance review board members.

**SUMMARY:** The National Labor Relations Board is issuing this notice that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 2017 and ending September 30, 2018.

**Name and Title**

Elizabeth Tursell—Associate to the General Counsel, Division of Operations Management

Linda Dreeben—(Alternate)—Deputy Associate General Counsel, Division of Enforcement Litigation  
Barbara O'Neill—Associate General Counsel, Division of Legal Counsel  
John Ferguson—(Alternate) Associate General Counsel, Division of Enforcement Litigation  
Kathleen A. Nixon—Deputy Chief Counsel to Member Pearce  
Andrew Krafts—Deputy Chief Counsel to Member McFerran  
Robert F. Schiff—Chief of Staff for Chairman Miscimarra  
Gary W. Shinnars (Alternate)—Executive Secretary

**FOR FURTHER INFORMATION CONTACT:** Gary Shinnars, Executive Secretary, National Labor Relations Board, 1015 Half Street SE., Washington, DC 20570, (202) 273-3737 (this is not a toll-free number), 1-866-315-6572 (TTY/TDD).

**Authority:** 5 U.S.C. 4314(c)(4).

Dated: September 27, 2017.

**Gary Shinnars,**  
*Executive Secretary.*

[FR Doc. 2017-21127 Filed 9-29-17; 8:45 am]

**BILLING CODE 7545-01-P****NATIONAL SCIENCE FOUNDATION****Committee Management; Notice of Establishment**

The Chief Operating Officer of the National Science Foundation has determined that the establishment of the STEM Education Advisory Panel is necessary and in the public interest in connection with the performance of the duties imposed upon the National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

**Name of Committee:** STEM Education Advisory Panel (#2624)

**1. Nature/Purpose:** The STEM Education Advisory Panel will provide advice and recommendations to the Committee on STEM Education (CoSTEM), assess CoSTEM's progress in carrying out responsibilities related to the America COMPETES Reauthorization Act, and help identify need or opportunity to update the Federal Science, Technology, Engineering, and Mathematics (STEM) Education 5-Year Strategic Plan.

**Responsible NSF Official:** William J. Lewis, Acting Assistant Director, Directorate for Education and Human Resources, National Science Foundation, 2415 Eisenhower Avenue, C 11004, Alexandria, VA 22314. Telephone: 703/292-8600.

Dated: September 27, 2017.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2017-21037 Filed 9-29-17; 8:45 am]

BILLING CODE 7555-01-P

## NUCLEAR REGULATORY COMMISSION

[NRC-2017-0039]

### Information Collection: Collection of Operator Simulator Training Data

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, "Collection of Operator Simulator Training Data."

**DATES:** Submit comments by November 1, 2017.

**ADDRESSES:** Submit comments directly to the OMB reviewer at: Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs (3150-XXXX), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-3621, email: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [INFOCOLLECTS.Resource@nrc.gov](mailto:INFOCOLLECTS.Resource@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket ID NRC-2017-0039 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-2017-0039.

- *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](mailto:pdr.resource@nrc.gov). The supporting statements are available in ADAMS under Accession No. ML17248A445 and ML17248A446, respectively.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [INFOCOLLECTS.Resource@NRC.GOV](mailto:INFOCOLLECTS.Resource@NRC.GOV).

##### B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <http://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

#### II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "Collection of Operator Simulator Training Data." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on June 27, 2017 (82 FR 29119).

1. *The title of the information collection:* "Collection of Operator Simulator Training Data."

2. *OMB approval number:* xxxx-xxxx.

3. *Type of submission:* Voluntary.

4. *The form number if applicable:* N/A.

5. *How often the collection is required or requested:* Six per year.

6. *Who will be required or asked to respond:* All holders of, or applicants for, a power reactor operating license under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), "Domestic Licensing of Production and Utilization Facilities," except those that have certified that they have permanently ceased operations and have permanently removed all fuel from the reactor vessel.

All holders of, or applicants for, a power reactor combined license under 10 CFR part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

7. *The estimated number of annual responses:* 95.

8. *The estimated number of annual respondents:* 15.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 411 hours.

10. *Abstract:* This information collection request is to the holders of, or applicants for, a power reactor operating license under 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," except those that have certified that they have permanently ceased operations and have permanently removed all fuel from the reactor vessel, and the holders of, or applicants for, a power reactor combined license under 10 CFR part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

This information collection is for the specified licensees to use the NRC-developed Scenario Authoring, Characterization and Debriefing Application (SACADA) software for their operator simulator training. The SACADA system was developed to collect licensed operator simulator training data to inform human reliability analysis (HRA) and to facilitate operator simulator training. The SACADA software can be used to author the simulation scenarios, facilitate the post simulation debriefing on crew performance, guide performance analysis, and generate various types of reports. The information entered into the SACADA database can be used to improve simulator training effectiveness and HRA. The South Texas Project Nuclear Operating Company (STPNOC) has used the software for its operator

simulator training since 2012 and has high regard on the software. The NRC welcomes more licensees to partner with the NRC to use the software. The licensees' participation in the information collection is voluntary. In the partnership, the NRC provides the SACADA software license, training, and technical support to the participating licensees, and the participating licensees grant NRC access to analyze the data to improve the NRC's HRA techniques. An agreement will be developed to specify the details.

To participate in the information collection, the licensee will notify the NRC contact that it is interested in evaluating the software. Then the NRC will provide additional information including an onsite briefing. If the licensee thinks the SACADA software could be beneficial, the NRC will provide a training session, the software license, and technical support for the licensee to pilot the use of the software in its simulator training. After the pilot study, the licensee will decide on whether or not to partner with the NRC on the information collection. Either party can terminate the agreement at any time.

Dated at Rockville, Maryland, this 26th day of September 2017.

For the Nuclear Regulatory Commission.

**David Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2017-20999 Filed 9-29-17; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2017-0001]

### Sunshine Act Meetings

**DATE:** Weeks of October 2, 9, 16, 23, 30, November 6, 2017.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

### Week of October 2, 2017

*Friday, October 6, 2017*

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public) (Contact: Mark Banks: 301-415-3718)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

### Week of October 9, 2017—Tentative

There are no meetings scheduled for the week of October 9, 2017.

### Week of October 16, 2017—Tentative

There are no meetings scheduled for the week of October 16, 2017.

### Week of October 23, 2017—Tentative

*Tuesday, October 24, 2017*

10:00 a.m. Strategic Programmatic Overview of the Operating Reactors Business Line (Public) (Contact: Trent Wertz: 301-415-1568)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

### Week of October 30, 2017—Tentative

There are no meetings scheduled for the week of October 30, 2017.

### Week of November 6, 2017—Tentative

There are no meetings scheduled for the week of November 6, 2017.

\* \* \* \* \*

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301-415-0681 or via email at [Denise.McGovern@nrc.gov](mailto:Denise.McGovern@nrc.gov).

\* \* \* \* \*

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301-287-0739, by videophone at 240-428-3217, or by email at [Kimberly.Meyer-Chambers@nrc.gov](mailto:Kimberly.Meyer-Chambers@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

\* \* \* \* \*

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington DC 20555 (301-415-1969), or email [Brenda.Akstulewicz@nrc.gov](mailto:Brenda.Akstulewicz@nrc.gov) or [Patricia.Jimenez@nrc.gov](mailto:Patricia.Jimenez@nrc.gov).

Dated: September 27, 2017.

**Denise L. McGovern,**  
*Executive Assistant, Office of the Secretary.*

[FR Doc. 2017-21151 Filed 9-28-17; 11:15 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2015-0176]

### Abnormal Occurrence Reports

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy revision; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to its policy statement on reporting abnormal occurrences (AOs) to Congress. The revised policy statement adds more specific criteria for determining those incidents and events that the Commission considers significant from the standpoint of public health or safety for reporting to Congress and the public, and makes the policy consistent with recent changes to NRC regulations. The revised AO criteria contain more discrete reporting thresholds, making them easier to implement and ensuring more consistent reporting.

**DATES:** This revision to the policy statement is effective on October 2, 2017.

**ADDRESSES:** Please refer to Docket ID NRC-2015-0176 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this action using any of the following methods:

- *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0176. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. For the convenience of the reader, the ADAMS Accession numbers are provided in a

table in Section VIII, “Availability of Documents,” of this document.

- *The NRC’s PDR*: You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:**

Tanya Palmateer Oxenberg, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2437; email: [Tanya.Oxenberg@nrc.gov](mailto:Tanya.Oxenberg@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Background
- II. Opportunity for Public Participation
- III. Coordination With NRC Agreement States
- IV. Coordination With the Advisory Committee on the Medical Uses of Isotopes
- V. Congressional Review Act
- VI. Availability of Documents

**I. Background**

Section 208, “Abnormal Occurrence Reports,” of the Energy Reorganization Act of 1974, as amended (Pub. L. 93–438) (the Act), defines an AO as an unscheduled incident or event that the NRC determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–66) requires that AOs be reported to Congress annually. As required by Section 208, the discussion for each reported event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. The Commission must also widely disseminate the AO report to the public within 15 days of publishing the AO report to Congress.

*Abnormal Occurrence Reporting*

The Commission has developed the AO policy statement to comply with Section 208 of the Energy Reorganization Act. The intent of the Act is to keep Congress and the public informed of unscheduled incidents or events that the Commission considers significant from the standpoint of public health or safety. The policy reflects a range of health and safety concerns and applies both to incidents and events involving a single individual and to those having an overall impact on the general public. The AO criteria use a high reporting threshold so that only those events considered significant from the standpoint of public health or safety are reported to Congress.

*Licensee Reports*

The changes to the policy statement do not change the reporting requirements for NRC licensees in Commission regulations, license conditions, or technical specifications. The NRC licensees will continue to submit required reports on a wide range of events, including instrument malfunctions and deviations from normal operating procedures that may not be significant from the standpoint of public health or safety but that provide data useful to the Commission in monitoring the operating trends of licensed facilities and in comparing the actual performance of these facilities with their design and/or licensing basis.

**II. Opportunity for Public Participation**

To develop the revised AO criteria, the NRC staff evaluated several AO approaches and consulted with experts in the reactor and nuclear material areas, including the Advisory Committee on the Medical Uses of Isotopes (ACMUI), and coordinated with Agreement States. The NRC staff undertook this effort to ensure that it was properly identifying those events that have the potential for significant health or safety consequences are reported to Congress.

After an evaluation, the NRC staff incorporated several comments provided by the States and ACMUI into the draft revision in SECY–15–0040, “Proposed Revisions to Policy Statement on Reporting Abnormal Occurrence Criteria,” dated March 19, 2015 (ADAMS Accession No. ML12166A091). The proposed AO policy statement that was published for comment included the Commission’s subsequent direction in the staff requirements memorandum (SRM) for SECY–15–0040, dated June 30, 2015 (ADAMS Accession No. ML15181A030). The proposed AO criteria was published in the **Federal Register** (FR) on August 17, 2015 (80 FR 49177), for a 90-day public comment period.

The NRC received three comment letters on the proposed AO criteria published in the FR from the Organization of Agreement States (OAS) (ADAMS Accession No. ML16209A194), Washington State Department of Health (WDH) (ADAMS Accession No. ML16209A199), and the Commonwealth of Virginia Department of Health (VDH) (ADAMS Accession No. ML16209A196). Each letter contained multiple comments. In summary, the comments asked the NRC to (1) revise and/or remove the dose threshold for reporting AO events to Congress on unintended exposures to an adult and a minor or an

embryo/fetus, (2) add “medical physicist” or revise “independent physician” in the requirement to obtain the determination of an independent physician, (3) remove the requirements for “irretrievable well logging sources,” (4) clarify the applicability of the “substantial breakdown” provision in Criterion I.C.4 to materials licensees, and (5) remove or modify Criterion III.C medical events.

**III. Coordination With NRC Agreement States**

The NRC coordinated with the Agreement States throughout the development of this final policy statement. In October 2013, the NRC provided a preliminary proposed policy statement to the Agreement States for their review and comment. The Agreement States provided comments on the preliminary proposed policy statement. Several comments resulted in revisions to the proposed AO criteria. A summary of the Agreement State comments and the NRC staff responses to those comments are available at ADAMS Accession No. ML14346A274.

The NRC received comment letters on the proposed AO criteria, which was published in the FR on August 17, 2015 (80 FR 49177). The NRC received comments from OAS, WDH, and VDH. Each letter contained multiple comments. The NRC staff analyzed and categorized these comments according to the AO criterion to which they apply. A summary of the Agreement States’ comments and the NRC staff responses to the comments are available in ADAMS under Accession No. ML16209A049. The staff did not make any changes in response to the comments.

The AO criteria are designed to identify those events that could signal a potential public health or safety issue and evaluate events in a broad industrywide perspective. In response to comments regarding the requirement that an independent physician determine whether permanent functional damage occurred, the NRC staff did not agree to add “authorized medical physicist” because medical physicists are neither qualified nor credentialed to make a medical determination that unintended permanent functional damage to an organ or a physiological system has occurred. The criterion requires a determination by an independent physician “deemed qualified by the NRC or Agreement State,” which takes into account all pertinent credentialing aspects of the individual, including specialty in the relevant field.

The staff disagreed with removing or modifying requirements for “irretrievable well logging sources” and Criterion III.C medical events. The staff disagreed with modifying the criterion regarding “irretrievable well logging sources” as NRC and Agreement State regulations require the licensee to evaluate the potential threat to public health or safety from an abandoned irretrievable source. This evaluation and dose assessment would be used as a basis to evaluate these events as potential AOs for irretrievable well logging sources. The NRC previously added Criterion III.C for medical AO because the Commission considered misadministrations to be a concern. The current criteria are based on doses that would likely have a significant potential for resulting in permanent deterministic effects.

In response to a comment that requested clarification of the applicability of the “substantial breakdown” provision in criterion I.C.4 to materials licensees, the staff explained that this criterion is principally for licensees that possess

special nuclear material and whose activities are included in a security plan required by part 73 of title 10 of the *Code of Federal Regulations* (10 CFR). Criterion I.C.1 is the principal criterion for security incidents involving materials subject to 10 CFR part 37 for NRC or Agreement State radioactive materials licensee events to determine if an AO has occurred.

#### IV. Coordination With the Advisory Committee on the Medical Uses of Isotopes

The ACMUI submitted comments on the proposed AO policy statement in a letter dated November 6, 2015 (ADAMS Accession No. ML15356A087). These comments concerned the reporting of incidents and events related to medical use that the ACMUI found may not be significant for public health or safety. The NRC prepared a response to the ACMUI recommendations (ADAMS Accession No. ML16209A061). Most of ACMUI's comments indicated agreement with the proposed revisions to the policy statement. However, ACMUI had three comments

recommending changes to the AO criteria. The staff disagreed with two comments and partially agreed with one comment. The staff agreed to add “and human research subjects” to footnote 2 to Criterion 1, but it disagreed with excluding events reported under § 35.3047 from Criterion I.A.2. The staff also disagreed with adding § 35.3047 to the footnote text because this would establish two different thresholds for reporting an AO involving exposure to an embryo/fetus: one for an embryo/fetus unintentionally exposed due to a medical administration to a pregnant individual and one for an embryo/fetus exposed from all other sources of licensed material.

#### V. Congressional Review Act

This policy statement is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

#### VI. Availability of Documents

The documents identified in the following table are available as indicated.

| Date             | Document                                                                                                                                                                                                                        | ADAMS Accession No./FR citation |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| 03/19/2015 ..... | SECY-15-0040, Proposed Revisions to Policy Statement on Reporting Abnormal Occurrence Criteria .....                                                                                                                            | ML12166A091                     |
| 06/30/2015 ..... | Staff Requirements—SECY-15-0040—Proposed Revisions to Policy Statement on Reporting Abnormal Occurrence Criteria.                                                                                                               | ML15181A030                     |
| 08/17/2015 ..... | Proposed revision to policy statement issued for a 90 day public comment period. ....                                                                                                                                           | 80 FR 49177                     |
| 11/16/2015 ..... | OAS letter to NRC, RE: Opportunity to Comment on Proposed Revision to Abnormal Occurrence Policy Statement.                                                                                                                     | ML16209A194                     |
| 11/17/2015 ..... | State of Washington Comment for Docket ID NRC-2015-0176 Abnormal Occurrence Criteria Revision .....                                                                                                                             | ML16209A199                     |
| 11/12/2015 ..... | Virginia Comments on Abnormal Occurrence (AO) Reporting Revision .....                                                                                                                                                          | ML16209A196                     |
| 03/19/2015 ..... | Summary of Major Agreement State Comments .....                                                                                                                                                                                 | ML14346A274                     |
| 07/08/2016 ..... | and Staff Response .....                                                                                                                                                                                                        |                                 |
| 07/08/2016 ..... | Summary of Organization of Agreement State (OAS), State of Washington, and Commonwealth of Virginia Comments and Staff Response.                                                                                                | ML16209A049                     |
| 11/06/2015 ..... | Final ACMUI Comments on Proposed Revision of the NRC Policy Statement on Reporting Abnormal Occurrences to Congress.                                                                                                            | ML15356A087                     |
| 10/09/2015 ..... | Meeting Summary, ACMUI Meeting, .....                                                                                                                                                                                           | ML15294A461                     |
| 08/08/2016 ..... | October 8–9, 2015 .....                                                                                                                                                                                                         |                                 |
| 08/08/2016 ..... | Staff's Response to the Advisory Committee on the Medical Uses of Isotopes' November 6, 2015, Recommendations to Final Comments on Proposed Revision of the NRC Policy Statement on Reporting Abnormal Occurrences to Congress. | ML16209A061                     |
| 06/24/2014 ..... | Management Directive 8.3, “NRC Incident Investigation Program” .....                                                                                                                                                            | ML13175A294                     |
| 04/11/2014 ..... | Management Directive 8.9, “Accident Investigation” .....                                                                                                                                                                        | ML13319A133                     |
| 10/03/2010 ..... | Management Directive 8.13, “Reactor Oversight Process,” DT-10-14 .....                                                                                                                                                          | ML101400045                     |
| 12/23/2015 ..... | Inspection Manual Chapter (IMC) 0305, “Operating Reactor Assessment Program” .....                                                                                                                                              | ML15317A147                     |
| 12/15/2006 ..... | IMC 350, “Oversight of Reactor Facilities in a Shutdown Condition Due to Significant Performance and/or Operational Concerns”.                                                                                                  | ML063400076                     |
| 06/30/2015 ..... | NUREG-1520 Rev. 2, “Standard Review Plan for Fuel Cycle Facilities License Applications,” Final Report                                                                                                                          | ML15176A258                     |

The final policy statement is attached.

Dated at Rockville, Maryland, this 26th day of September 2017.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

## Statement of Policy

### General Statement of Policy on the Implementation of Section 208 of the Energy Reorganization Act of 1974, as Amended

#### Applicability

Implementation of Section 208, "Abnormal Occurrence Reports," of the Energy Reorganization Act of 1974, as amended, involves the conduct of Commission business and does not impose requirements on licensees or certified facilities. The reports cover certain unscheduled incidents or events related to the manufacture, construction, or operation of a facility or the conduct of an activity subject to the requirements of parts 20, 30 through 37, 39, 40, 50, 61, 70, 71, 72, or 76 of title 10 of the *Code of Federal Regulations* (10 CFR).

Agreement States provide information to the U.S. Nuclear Regulatory Commission (NRC) on incidents and events involving nuclear materials in those States. Agreement States are those States that have entered into formal agreements with the NRC, pursuant to Section 274 of the Atomic Energy Act of 1954, as amended (AEA) (Pub. L. 83-703), to regulate certain quantities of AEA material at facilities located within their borders. Events reported by Agreement States that reach the threshold for reporting as abnormal occurrences (AOs) are also published in the "Report to Congress on Abnormal Occurrences."

#### Abnormal Occurrence General Statement of Policy

The Commission will apply the following policy in determining whether an incident or event at a facility or involving an activity that is licensed or otherwise regulated by the Commission or an Agreement State is an AO.<sup>1</sup>

An incident or event is considered an AO if it involves a major reduction in the protection of public health or safety. The incident or event has a moderate or severe impact on public health or safety and could include, but need not be limited to, the following:

(1) Moderate exposure to, or release of, radioactive material licensed by or

otherwise regulated by the Commission or Agreement States;

(2) Major degradation of essential safety-related equipment;

(3) Major deficiencies in design, construction, or use of, or management controls for, facilities or radioactive material licensed by or otherwise regulated by the Commission or Agreement States; or

(4) Substantiated case of actual loss, theft, or diversion of risk-significant radioactive material licensed by or otherwise regulated by the Commission or Agreement States.

Appendix A to this policy statement sets forth the criteria for determining whether an incident or event is as an AO.

#### Commission Dissemination of Abnormal Occurrence Information

The Commission widely disseminates AO reports to the public. The Commission submits an annual report to Congress on AOs at or associated with any facility or activity that is licensed or otherwise regulated by the NRC. This report provides the date, place, nature, and probable consequences of each AO; the cause or causes of each AO; and any action taken by the licensee to prevent recurrence.

#### Appendix A: Abnormal Occurrence Criteria

An incident or event is considered an abnormal occurrence (AO) if it involves a major reduction in the degree of protection of public health or safety. This type of incident or event has a moderate or severe impact on public health or safety and could include, but need not be limited to, the following:

(1) Moderate exposure to, or release of, radioactive material licensed by or otherwise regulated by the Commission or Agreement States;

(2) Major degradation of essential safety-related equipment;

(3) Major deficiencies in design, construction, or use of, or management controls for facilities or radioactive material licensed by or otherwise regulated by the Commission or Agreement States; or

(4) Substantiated case of actual loss, theft, or diversion of risk-significant radioactive material licensed by or otherwise regulated by the Commission or Agreement States.

#### Abnormal Occurrence Criteria

The following presents the criteria, by types of events, used to determine which events will be considered for reporting as AOs.

#### I. All Licensees.<sup>2</sup>

##### A. Human Exposure to Radiation from Licensed Material.

1. Any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in:

(a) An annual total effective dose equivalent (TEDE) of 250 millisieverts (mSv) (25 rem) or more;

(b) An annual sum of the deep dose equivalent (external dose) and committed dose equivalent (intake of radioactive material) to any individual organ other than the lens of the eye, the bone marrow, and the gonads of 2,500 mSv (250 rem) or more;

(c) An annual dose equivalent to the lens of the eye of 1 sievert (Sv) (100 rem) or more;

(d) An annual sum of the deep dose equivalent and committed dose equivalent to the bone marrow of 1 Sv (100 rem) or more;

(e) A committed dose equivalent to the gonads of 2,500 mSv (250 rem) or more; or

(f) An annual shallow dose equivalent to the skin or extremities of 2,500 mSv (250 rem) or more.

2. Any unintended radiation exposure to any minor (an individual less than 18 years of age) resulting in an annual TEDE of 50 mSv (5 rem) or more, or to an embryo/fetus resulting in a dose equivalent of 50 mSv (5 rem) or more.

3. Any radiation exposure that has resulted in unintended permanent functional damage to an organ or a physiological system as determined by an independent physician<sup>3</sup> deemed qualified by the U.S. Nuclear Regulatory Commission (NRC) or Agreement State.

##### B. Discharge or Dispersal of Radioactive Material from Its Intended Place of Confinement.

The release of radioactive material to an unrestricted area in concentrations that, if averaged over a period of 24 hours, exceed 5,000 times the values specified in Table 2 of Appendix B, "Annual Limits on Intake (ALIs) and Derived Air Concentrations (DACs) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sewerage," to 10 CFR part 20, "Standards for protection against radiation," unless the licensee has demonstrated compliance with § 20.1301, "Dose limits for individual members of the public," using § 20.1302(b)(1) or § 20.1302(b)(2)(ii). This criterion does not apply to transportation events.

##### C. Theft, Diversion, or Loss of Licensed Material; Sabotage; or Security Breach.<sup>4 5 6</sup>

1. Any stolen, diverted, abandoned, or unrecovered lost radioactive material that

<sup>2</sup> Medical patients and human research subjects are excluded from consideration under these criteria, and these criteria do not apply to medical events defined in § 35.3045 of title 10 of the *Code of Federal Regulations* (10 CFR), "Report and notification of a medical event," which are considered in AO Criteria III.C.

<sup>3</sup> "Independent physician" is defined as a physician not on the licensee's staff and who was not involved in the care of the patient involved.

<sup>4</sup> Information pertaining to certain incidents may either be classified or under consideration for

<sup>1</sup> Events reported to the NRC by Agreement States that reach the threshold for reporting as AOs will be reported as such by the Commission.

meets or exceeds the thresholds listed in Appendix A, "Category 1 and Category 2 Radioactive Materials," to 10 CFR part 37, "Physical protection of category 1 and category 2 quantities of radioactive material." Excluded from reporting under this criterion are those events involving sources that are lost or abandoned under the following conditions: sources that have been lost and for which a reasonable attempt at recovery has been made without success, or irretrievable well logging sources as defined in § 39.2, "Definitions." These sources are only excluded if there is reasonable assurance that the doses from these sources have not exceeded, and will not exceed, the reporting thresholds specified in AO Criteria I.A.1 and I.A.2 and the agency has determined that the risk of theft or diversion is acceptably low.

2. An act that results in radiological sabotage as defined in § 73.2.

3. Any substantiated<sup>7</sup> case of actual theft, diversion, or loss of a formula quantity of special nuclear material,<sup>8</sup> or an inventory discrepancy of a formula quantity of special nuclear material<sup>9</sup> that is judged to be caused by theft or diversion.

4. Any substantial breakdown<sup>9</sup> of physical security, cyber security, or material control and accountability programs that significantly weakens the protection against loss, theft, diversion, or sabotage.

5. Any significant unauthorized disclosures (loss, theft, and/or deliberate disclosure) of classified information that

classification because of national security implications. Classified information will be withheld when formally reporting these incidents in accordance with Executive Order 13526, "Classified National Security Information," as amended (75 FR 707; January 5, 2010), or any predecessor or successor order to require protection against unauthorized disclosures. Any classified details about these incidents would be available to Congress upon request, under appropriate security arrangements.

<sup>5</sup> Information pertaining to certain incidents may be Safeguards Information as defined in § 73.2 because of safety and security implications. The AO report would withhold specific Safeguards Information in accordance with Section 147 of the Atomic Energy Act of 1954, as amended. Any safeguards details regarding these incidents would be available to Congress upon request, under appropriate security arrangements.

<sup>6</sup> Reporting lost or stolen material is based on the activity of the source at the time the radioactive material was known to be lost or stolen. If, by the time the AO report is due to Congress, the radioactive material has decayed below the thresholds listed in Appendix A to 10 CFR part 37, the report will clarify that the radioactive material has decayed below the thresholds.

<sup>7</sup> "Substantiated" means a situation in which there is an indication of loss, theft, or unlawful diversion, such as an allegation of diversion, report of lost or stolen material, or other indication of loss of material control or accountability that cannot be refuted following an investigation, and requires further action on the part of the agency or other proper authorities.

<sup>8</sup> "Formula quantity of special nuclear material" is defined in § 70.4, "Definitions."

<sup>9</sup> A substantial breakdown is defined as a red finding under the Reactor Oversight Process (ROP) in the physical security inspection program or any plant or facility determined to have overall unacceptable performance.

harms national security or of Safeguards Information that threatens public health or safety.

*D. Initiation of High-Level NRC Team Inspection.<sup>10</sup>*

## II. Commercial Nuclear Power Plant Licensees.

*A. Malfunction of Facility, Structures, or Equipment.*

1. Exceeding a safety limit of a license technical specification (TS) (§ 50.36(c)).

2. Serious degradation of fuel integrity, primary coolant pressure boundary, or primary containment boundary.

3. Loss of plant capability to perform essential safety functions so that a release of radioactive materials that could result in exceeding the dose limits of 10 CFR part 100, "Reactor site criteria," or five times the dose limits of General Design Criteria (GDC) 19, "Control Room," in Appendix A, "General Design Criteria for Nuclear Power Plants," to 10 CFR part 50, "Domestic licensing of production and utilization facilities," could occur from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod system).

*B. Design or Safety Analysis Deficiency, Personnel Error, or Procedural or Administrative Inadequacy.*

1. Discovery of a major condition not specifically considered in the safety analysis report or TS that requires immediate remedial action.

2. Personnel error or procedural deficiencies that result in the loss of plant capability to perform essential safety functions such that a release of radioactive materials exceeding the dose limits of 10 CFR part 100 or five times the dose limits of GDC 19 in Appendix A to 10 CFR part 50, could occur from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod drive mechanism).

<sup>10</sup> This item addresses the initiation of any incident investigation teams, as described in NRC Management Directive (MD) 8.3, "NRC Incident Investigation Program" (ADAMS Accession No. ML13175A294), or initiation of any accident review groups, as described in MD 8.9, "Accident Investigation" (ADAMS Accession No. ML13319A133).

*C. Any operating reactor events or conditions evaluated by the NRC ROP to be the result of or associated with licensee performance issues of high safety significance.<sup>11</sup>*

*D. Any operating reactor events or conditions evaluated by the NRC Accident Sequence Precursor (ASP) program to have a conditional core damage probability (CCDP) or change in core damage probability (ΔCDP) of greater than or equal to  $1 \times 10^{-3}$ .<sup>12</sup>*

*E. Any operating reactor plants that are determined to have overall unacceptable performance or are in a shutdown condition as a result of significant performance problems and/or operational event(s).<sup>13</sup>*

## III. Events at Facilities Other Than Nuclear Power Plants and All Transportation Events.

*A. Events Involving Design, Analysis, Construction, Testing, Operation, Transport, Use, or Disposal.*

1. An accidental criticality.

2. A major deficiency in design, construction, control, or operation having significant safety implications that require immediate remedial action.

3. A serious safety-significant deficiency in management or procedural controls.

4. A series of events (in which the individual events are not of major importance), recurring incidents, or incidents with implications for similar facilities (generic incidents) that raise a major safety concern.

*B. Fuel Cycle Facilities.<sup>14</sup>*

1. Absence or failure of all safety controls (engineered and human) such that conditions were present for the occurrence of a high-consequence event involving an

<sup>11</sup> The NRC ROP uses four colors to describe the safety significance of licensee performance. As defined in NRC MD 8.13, "Reactor Oversight Process" (ADAMS Accession No. ML101400045), green is used for very low safety significance, white is used for low to moderate safety significance, yellow is used for substantial safety significance, and red is used for high safety significance. Reactor conditions or performance indicators evaluated to be red are considered AOs.

<sup>12</sup> Results from the NRC ASP program are used to monitor agency performance against the agency's strategic safety goal (e.g., ensure the safe use of radioactive materials) and objectives (e.g., prevent and mitigate accidents and ensure radiation safety). A precursor event with a CCDP or ΔCDP of greater than or equal to  $1 \times 10^{-3}$  is used as a performance indicator for the strategic safety goal by determining that there have been no significant precursors of a nuclear reactor accident and that there have been no more than one significant adverse trend in industry safety performance.

<sup>13</sup> Any plants assessed by the ROP to be in the unacceptable performance column, as described in NRC Inspection Manual Chapter (IMC) 0305, "Operating Reactor Assessment Program" (ADAMS Accession No. ML15317A147), or under NRC IMC 0350, "Oversight of Reactor Facilities in a Shutdown Condition Due to Significant Performance and/or Operational Concerns" (ADAMS Accession No. ML063400076). This assessment of safety performance is based on the number and significance of NRC inspection findings and licensee performance indicators.

<sup>14</sup> Criterion III.A also applies to fuel cycle facilities.

NRC-regulated hazard (radiological or chemical).<sup>15</sup>

2. An NRC-ordered safety-related or security-related immediate remedial action.

*C. Events Involving the Medical Use of Radioactive Materials in Patients or Human Research Subjects.*<sup>16</sup>

1. A medical event, as defined in § 35.3045, which results in a dose that:

(a) Is equal to or greater than 1 gray (Gy) (100 rad) to a major portion of the bone marrow or to the lens of the eye; or equal to or greater than 2.5 Gy (250 rad) to the gonads; or

(b) Exceeds, by 10 Gy (1,000 rad), the expected dose to any other organ or tissue from the administration defined in the written directive; and

2. A medical event, as defined in § 35.3045, which involves:

- (a) A dose or dosage that is at least 50 percent greater than that prescribed, or
- (b) A prescribed dose or dosage that:
  - (i) Uses the wrong radiopharmaceutical or unsealed byproduct material; or
  - (ii) Is delivered by the wrong route of administration; or
  - (iii) Is delivered to the wrong treatment site; or
  - (iv) Is delivered by the wrong treatment mode; or
  - (v) Is from a leaking source or sources; or
  - (vi) Is delivered to the wrong individual or human research subject.

**Appendix B: Other Events of Interest**

This appendix discusses other events of interest that do not meet the criteria for abnormal occurrences (AOs) in Appendix A to this policy statement. The Commission may determine that events other than AOs may be of interest to Congress and the public and should be included in an appendix to the AO report as "Other Events of Interest." Such events may include, but are not necessarily limited to, events that do not meet the AO

<sup>15</sup> High-consequence events for facilities licensed under 10 CFR part 70, "Domestic licensing of special nuclear material," are those that could seriously harm the worker or a member of the public in accordance with § 70.61, "Performance requirements." The integrated safety analysis conducted and maintained by the licensee or applicant of 10 CFR part 70 fuel cycle facilities identifies such hazards and the safety controls (§ 70.62(c)) applied to meet the performance requirements in accordance with § 70.61(b) through (d).

Fuel cycle facilities licensed under 10 CFR part 40, "Domestic licensing of source material," or certified under 10 CFR part 76, "Certification of gaseous diffusion plants," have licensing basis documents that describe facility specific hazards, consequences, and those controls used to prevent or mitigate the consequences of such accidents. For these facilities, a high-consequence event would be a release that has the potential to cause acute radiological or chemical exposures to a worker or a member of the public similar to that defined in Appendix A to Chapter 3, Section A.2, of NUREG 1520, Revision 2, "Standard Review Plan for Fuel Cycle Facilities License Applications—Final Report," issued June 2015, under "Consequence Category 3 (High Consequences)" (ADAMS Accession No. ML15176A258).

<sup>16</sup> Criteria III.A.2, III.A.3, and III.A.4 also apply to medical licensees.

criteria but that have been perceived by Congress or the public to be of high health or safety significance, have received significant media coverage, or have caused the U.S. Nuclear Regulatory Commission to increase its attention to or oversight of a program area, or a group of similar events that have resulted in licensed materials entering the public domain in an uncontrolled manner.

[FR Doc. 2017–21043 Filed 9–29–17; 8:45 am]

BILLING CODE 7590–01–P

**PENSION BENEFIT GUARANTY CORPORATION**

**Proposed Submission of Information Collection for OMB Review; Comment Request; Termination of Single-Employer Plans, Missing Participants**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of intent to request extension of OMB approval.

**SUMMARY:** Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval (with modifications), under the Paperwork Reduction Act of 1995, of a collection of information in its regulations on Termination of Single-Employer Plans and Missing Participants, and implementing forms and instructions. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

**DATES:** Comments should be submitted by December 1, 2017.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.
- *Email:* [paperwork.comments@pbgc.gov](mailto:paperwork.comments@pbgc.gov).
- *Mail or Hand Delivery:* Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

PBGC will make all comments available on its Web site at [www.pbgc.gov](http://www.pbgc.gov).

Copies of the collection of information may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to

202–326–4040.) The regulations and forms and instructions relating to this collection of information are available on PBGC's Web site at [www.pbgc.gov](http://www.pbgc.gov).

**FOR FURTHER INFORMATION CONTACT:** Jo Amato Burns ([burns.jo.amato@pbgc.gov](mailto:burns.jo.amato@pbgc.gov)), Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202 326–4400, ext. 3072, or Daniel S. Liebman ([daniel.liebman@pbgc.gov](mailto:daniel.liebman@pbgc.gov)), Acting Assistant General Counsel, same address and phone number, ext. 6510. TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400.

**SUPPLEMENTARY INFORMATION:** Under section 4041 of the Employee Retirement Income Security Act of 1974, as amended, a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to ERISA section 4041(b), for standard terminations, and section 4041(c), for distress terminations, and PBGC's termination regulation (29 CFR part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed, the plan administrator is subject to the requirements of ERISA section 4050 and PBGC's regulation on missing participants (29 CFR part 4050). These regulations may be found on PBGC's Web site at <http://www.pbgc.gov/res/laws-and-regulations/code-of-federal-regulations.html>.

The collection of information under these regulations and the implementing forms and instructions has been approved by OMB under control number 1212–0036 (expires November 30, 2017). PBGC is requesting that OMB extend its approval for three years, with modifications. 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.

PBGC is proposing to provide that the plan administrator of a plan terminating in a standard termination, or a distress termination that closes out in the private sector, may submit termination forms electronically (scanned and emailed or faxed), rather than by mail or

personal delivery only. PBGC is proposing this new submission provision to increase the ease of submission for plan administrators.

In addition, PBGC is proposing to include an opportunity for plan sponsors to contact PBGC for a pre-filing consultation to discuss the filing process and ensure the filing of a distress termination is appropriate given the sponsor's specific circumstances. This consultation will assist PBGC and the plan sponsor in exploring whether a waiver of one or more filing obligations is appropriate, identifying potential issues preventing a distress termination of a particular plan, and may indicate that commencement of an agency-initiated termination of the pension plan is warranted. This consultation will be voluntary and will result in little or no added burden on the plan sponsor.

PBGC estimates that 1,276 plan administrators will be subject to the collection of information requirements in PBGC's regulations on termination and missing participants and implementing forms and instructions each year, and that the total annual burden of complying with these requirements will be 1,560 hours and \$1,350,400.

PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC, by

**Stephanie Cibinic,**

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

[FR Doc. 2017-20927 Filed 9-29-17; 8:45 am]

**BILLING CODE 7709-02-P**

## POSTAL REGULATORY COMMISSION

[MC2017-207 and CP2017-315; MC2017-208 and CP2017-316; MC2017-209 and CP2017-317; MC2017-210 and CP2017-318; MC2017-211 and CP2017-319; MC2017-212 and CP2017-320]

### 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 a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* October 4, 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>).

*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).*: MC2017-207 and CP2017-315; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 361 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 26, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 4, 2017.

2. *Docket No(s).*: MC2017-208 and CP2017-316; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 362 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 26, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 4, 2017.

3. *Docket No(s).*: MC2017-209 and CP2017-317; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 363 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 26, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Katalin K. Clendenin; *Comments Due:* October 4, 2017.

4. *Docket No(s).*: MC2017-210 and CP2017-318; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 364 to Competitive Product List and Notice of

Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date*: September 26, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Katalin K. Clendenin; *Comments Due*: October 4, 2017.

5. *Docket No(s)*: MC2017–211 and CP2017–319; *Filing Title*: Request of the United States Postal Service to Add Parcel Select Contract 23 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date*: September 26, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Kenneth R. Moeller; *Comments Due*: October 4, 2017.

6. *Docket No(s)*: MC2017–212 and CP2017–320; *Filing Title*: Request of the United States Postal Service to Add First-Class Package Service Contract 82 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date*: September 26, 2017; *Filing Authority*: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative*: Kenneth R. Moeller; *Comments Due*: October 4, 2017. This notice will be published in the **Federal Register**.

Stacy L. Ruble,  
Secretary.

[FR Doc. 2017–21080 Filed 9–29–17; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List. **DATES:** *Date of notice required under 39 U.S.C. 3642(d)(1)*: October 2, 2017.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 26, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 362 to Competitive*

*Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2017–208, CP2017–316.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–21012 Filed 9–29–17; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of notice required under 39 U.S.C. 3642(d)(1)*: October 2, 2017.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 26, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 82 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2017–212, CP2017–320.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–21016 Filed 9–29–17; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of notice required under 39 U.S.C. 3642(d)(1)*: October 2, 2017.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 26,

2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 361 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2017–207, CP2017–315.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–21011 Filed 9–29–17; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of notice required under 39 U.S.C. 3642(d)(1)*: October 2, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 26, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 363 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2017–209, CP2017–317.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–21013 Filed 9–29–17; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of notice required under 39 U.S.C. 3642(d)(1)*: October 2, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 26, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 364 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2017–210, CP2017–318.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–21014 Filed 9–29–17; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Parcel Select Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of notice required under 39 U.S.C. 3642(d)(1):* October 2, 2017.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 26, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Select Contract 23 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2017–211, CP2017–319.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–21015 Filed 9–29–17; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81722; File No. SR–FINRA–2017–029]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036

September 26, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on September 19, 2017, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b–4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to delay, until June 25, 2018, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) pursuant to SR–FINRA–2015–036, other than the amendments pursuant to SR–FINRA–2015–036 that were implemented on December 15, 2016. The proposed rule change would not make any changes to FINRA rules.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

On October 6, 2015, FINRA filed with the Commission proposed rule change SR–FINRA–2015–036, which proposed to amend FINRA Rule 4210 to establish margin requirements for (1) To Be Announced (“TBA”) transactions, inclusive of adjustable rate mortgage (“ARM”) transactions; (2) Specified Pool Transactions; and (3) transactions in Collateralized Mortgage Obligations (“CMOs”), issued in conformity with a program of an agency or Government-Sponsored Enterprise (“GSE”), with forward settlement dates, as defined more fully in the filing (collectively, “Covered Agency Transactions”). The Commission approved SR–FINRA–2015–036 on June 15, 2016 (the “Approval Date”).<sup>4</sup>

FINRA proposed in Amendment No. 3 to SR–FINRA–2015–036 to implement the rule change 18 months from the Approval Date, except that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and in new Supplementary Material .05, each as respectively amended or established by SR–FINRA–2015–036 (collectively, the “risk limit determination requirements”), would be implemented six months from the Approval Date.<sup>5</sup> As FINRA announced in *Regulatory Notice* 16–31 (the “Notice”), the amendments relating to the risk limit determination requirements became effective on December 15, 2016.<sup>6</sup> FINRA announced in the Notice that December 15, 2017 would be the effective date for all other amendments pursuant to SR–FINRA–

<sup>4</sup> See Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR–FINRA–2015–036).

<sup>5</sup> See Partial Amendment No. 3 to SR–FINRA–2015–036, available at: [www.finra.org](http://www.finra.org); see also *Regulatory Notice* 16–31 (August 2016) (announcing December 15, 2016 as the effective date for the amendments relating to the risk limit determination requirements pursuant to SR–FINRA–2015–036 and announcing December 15, 2017 as the effective date for all other amendments pursuant to the rule change).

<sup>6</sup> See *Regulatory Notice* 16–31.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 17 CFR 240.19b–4(f)(6).

2015–036 (the “December 15, 2017 implementation date”).

FINRA has received questions regarding implementation of the requirements of SR–FINRA–2015–036. In response, FINRA has engaged in extensive discussions with industry participants and other regulators, including staff of the SEC, and has made available a set of Frequently Asked Questions & Guidance to facilitate members’ efforts to comply with the rule change.<sup>7</sup> In addition, industry participants have requested additional time to make systems changes necessary to comply with the requirements of SR–FINRA–2015–036, including time to test the systems changes, and have requested time to update or amend margining agreements and related documentation. Given the systems changes necessary, and industry participants’ request for additional time to update or amend margining agreements and related documentation, FINRA believes it is appropriate to extend the December 15, 2017 implementation date to June 25, 2018. FINRA notes that the risk limit determination requirements pursuant to SR–FINRA–2015–036 became effective on December 15, 2016 and, as such, the implementation of such requirements is not affected by the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of filing of the proposed rule change.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change provides industry participants additional time to complete the systems changes necessary to comply with SR–FINRA–2015–036, and provides them additional time to update

or amend margining agreements and related documentation. FINRA believes that providing such additional time is consistent with the Act in that it thereby facilitates implementation of SR–FINRA–2015–036, which, by establishing margin requirements for Covered Agency Transactions, will help among other things to reduce the risk of loss due to counterparty failure in one of the largest fixed income markets and thereby help protect investors and the public interest by ensuring orderly and stable markets.

### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

FINRA 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. FINRA believes that providing additional time for industry participants to make and test the systems changes necessary to comply with SR–FINRA–2015–036, and providing additional time to update or amend margining agreements and related documentation, will benefit all interested parties.

### *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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b–4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b–4(f)(6)<sup>11</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection

of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. FINRA has stated that the purpose of the proposed rule change is to provide industry participants additional time to make systems changes necessary to comply with the requirements of SR–FINRA–2015–036, including time to test the systems changes, and time to update or amend margining agreements and related documentation. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and will help to facilitate the implementation of the margin requirements for Covered Agency Transactions. Therefore, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–FINRA–2017–029 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–FINRA–2017–029. This file number should be included on the

<sup>7</sup> Available at: [www.finra.org/industry/guidance](http://www.finra.org/industry/guidance). Further, staff of the SEC’s Division of Trading and Markets have made available a set of Frequently Asked Questions regarding Exchange Act Rule 15c3–1 and Rule 15c3–3 in connection with Covered Agency Transactions under FINRA Rule 4210, also available at: [www.finra.org/industry/guidance](http://www.finra.org/industry/guidance).

<sup>8</sup> 15 U.S.C. 78o–3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires FINRA to give the Commission written notice of FINRA’s 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. FINRA has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b–4(f)(6).

<sup>12</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2017-029 and should be submitted on or before October 23, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-21001 Filed 9-29-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81725; File No. SR-IEX-2017-30]

### Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Listing Fees

September 26, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 13, 2017, the Investors Exchange LLC ("IEX" or the "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 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"),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> Investors Exchange LLC ("IEX" or "Exchange") is filing with the Commission a proposed rule change to amend Rule 14.601, which is currently reserved, to (i) adopt an annual fee of \$50,000 for companies listing on the Exchange and (ii) provide for specified fee credits.

The text of the proposed rule change is available at the Exchange's Web site at [www.iextrading.com](http://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 statements [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

On June 17, 2016, the Commission granted IEX's application for registration as a national securities exchange under Section 6 of the Act including approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.<sup>6</sup> The Exchange plans to begin a listing program in 2017 and is proposing to adopt a simple fee

structure for listed companies.<sup>7</sup>

Specifically, the Exchange proposes to amend Rule 14.601 to (i) adopt an all-inclusive annual fee of \$50,000 for companies listing on the Exchange and (ii) provide for specified fee credits for a company that is approved for IEX listing<sup>8</sup> and, prior to or within 120 calendar days of the first IEX listing, announces its intent to transfer its listing to IEX in the company's press release issued pursuant to Rule 12d2-2(c)(2)(iii) under the Act<sup>9</sup> announcing its intent to withdraw its securities from listing on its current national securities exchange.

As proposed, paragraph (a) of Rule 14.601 contains introductory text stating that the rule sets forth the required listing fees. Paragraph (b) specifies a \$50,000 all-inclusive annual listing fee that will be payable annually by each listed company on January 1st of each year for the upcoming calendar year, subject to fee credits as specified in paragraph (c) and described more fully below. The annual listing fee will not be charged in the first calendar year of a company's listing on IEX, but thereafter would be the only fee payable by a listed company per year for all aspects of its listing. The Exchange is not proposing to charge application fees, entry fees, fees for the listing of additional shares, recordkeeping fees, substitution listing fees, fees for a written interpretation of listing rules or hearing fees. All listed companies will be subject to the same annual listing fee, without differentiation based on the number of shares outstanding, unless eligible for a fee credit as described below. Paragraph (b) also provides that the annual fee will be subject to a pro-rata refund if the company ceases to be

<sup>7</sup> The Exchange's listing program launch is pending Commission rulemaking to amend Rule 146 under Section 18 of the Securities Act of 1933 ("Securities Act") to designate securities listed on the Exchange as covered securities for purposes of Section 18(b) of the Securities Act. See Securities Act Release No. 10390 (July 14, 2017) 82 FR 33839 (July 21, 2017) (File No. S7-06-17) proposing such rule amendment.

<sup>8</sup> See IEX Rule 14.202.

<sup>9</sup> Rule 12d2-2(c) under the Act specifies, among other things, the requirements applicable to an issuer of a class of securities listed on a national securities exchange to notify the Commission of its withdrawal of such securities from listing on such national securities exchange. Subparagraph 2(ii) thereto requires that the issuer must provide notice to its national securities exchange of such determination no fewer than 10 days before notification to the Commission. Subparagraph 2(iii) thereto requires that "[c]ontemporaneous with providing written notice to the exchange of its intent to withdraw a class of securities from listing and/or registration, the issuer must publish notice of such intention, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, posting such notice on that Web site."

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR [sic] 240.19b-4.

<sup>6</sup> See Securities Exchange Act Release No. 34-78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (File No. 10-222).

listed on IEX during the calendar year for which such fee was paid. Paragraph (d) specifies that the Exchange is not proposing to charge any other listing fees.

The Exchange proposes to provide a fee credit to any company that is approved for IEX listing and prior to or within 120 calendar days of the first IEX listing, announces its intent to transfer its listing to IEX in the company's press release issued pursuant to Rule 12d2-2(c)(2)(iii) under the Act<sup>10</sup> announcing its intent to withdraw its securities from listing on its current national securities exchange. The credit will also apply to the first IEX listing if such listing is a transfer from another national securities exchange. The Exchange will provide notice of the first listing to the issuer community on the day when the first listing occurs. The fee credit will be the greater of \$250,000 or the amount of any nonrefundable listing fees actually paid by the company to another listing exchange during the calendar year in which it lists on IEX if the company is no longer listed on such other exchange upon listing on IEX. The fee credit may only be used to offset the IEX all-inclusive listing fee.<sup>11</sup>

Notwithstanding the fee credit, IEX will have sufficient resources available for its listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected. Specifically, as described in the Commission's order approving IEX's exchange application, the Exchange and IEX Group, Inc. (its parent) have entered into an agreement that requires IEX Group, Inc. to provide adequate funding for the Exchange's operations, including regulation of the Exchange.<sup>12</sup>

## 2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>13</sup> of the Act in general, and furthers the objectives of Sections [sic] 6(b)(4)<sup>14</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. Additionally, IEX believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5)<sup>15</sup> of the Act, in particular, in that they are designed to promote just and equitable

principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a preliminary matter, IEX is a new entrant in the exchange listing market and expects to face intense competition from the New York Stock Exchange ("NYSE") and the Nasdaq Stock Market ("NASDAQ"), which, IEX believes, essentially operate as a duopoly in the U.S. listing market with the vast majority of operating companies listed on U.S. securities exchanges listed on those two. As discussed more fully below, IEX's proposed simple low cost flat-fee structure, combined with the limited fee credit, as well as no fee in the first year of listing, is designed to address the significant competitive challenges. Moreover, in view of the competition among listing exchanges, whereby companies can easily choose not to list on IEX, the fees that IEX can charge listed companies are constrained by the fees charged by its competitors and IEX cannot charge fees in a manner that would be unreasonable, inequitable, or unfairly discriminatory.

As described more fully below, IEX's proposed listing fees and credits are available to all listed companies in a consistent and transparent manner, treating similarly situated companies similarly. IEX has chosen to structure its listing fees differently than NYSE and NASDAQ, which are generally based on shares outstanding. This structure has existed for many years, and has been justified on the basis that companies with fewer shares outstanding tend to be smaller companies, which may use fewer of the listing exchange's services and be more willing to forgo an exchange listing if it costs more.<sup>16</sup> However, the Exchange does not believe that the number of shares outstanding of a particular company necessarily corresponds to the size of the company. To the contrary, there are a variety of examples that demonstrate that shares outstanding does not correlate to larger market capitalization. This fee structure thus results in similarly situated companies being charged materially different listing fees. For example, Conagra Brands, Inc. (symbol: CAG), Fleetcor Technologies Inc. (symbol: FLT), and Autozone Inc. (symbol: AZO) each have similar market capitalizations (\$13.5 billion, \$13.1 billion, and \$14.7 billion respectively) but because of

differences in shares outstanding, we estimate that CAG paid an annual listing fee in 2017 to NYSE of \$436,438 per year while FLT paid \$96,473 and AZO paid \$59,500. Similarly, NVIDIA Corp (symbol: NVDA) and The Priceline Group Inc. (symbol: PCLN) each have similar market capitalizations (\$99 billion and \$87.8 billion respectively) but because of differences in shares outstanding, we estimate that NVDA paid an annual listing fee in 2017 to NASDAQ of \$155,000 while PCLN paid \$55,000. And we estimate that Biocryst Pharmaceuticals Inc. (symbol: BCRX), with a market capitalization of only \$397.3 million, paid a \$100,000 annual listing fee to NASDAQ in 2017, almost double the PCLN fee notwithstanding that PCLN's market capitalization is approximately 221 times greater (\$87.4 billion greater) than BCRX's market capitalization.<sup>17</sup>

In addition, a company that has made the decision to effect a forward stock split will, under the existing exchange pricing structure, be charged double their previous listing fee (subject to any relevant maximum fees as discussed below) despite the fact that the company has not changed in structure or market capitalization.

IEX also does not believe that smaller companies use fewer listing exchange services. To the contrary, the Exchange believes that larger companies generally use fewer regulatory services than smaller companies since they tend to be more consistently above the continued listing requirements, and also tend to utilize more sophisticated advisors for interactions with the listing exchange. Thus, the Exchange believes that its simple listing fee and credit structure is a more reasonable and equitable approach, as described below.

The Exchange believes that \$50,000 per year for the all-inclusive annual listing fee is fair and reasonable based on IEX's anticipated costs to support and maintain a listing business, including its listing compliance program. IEX also notes that the proposed fee is less than all NYSE fees, within the range of NASDAQ fees, and materially less than the maximum annual fees charged by each of NYSE and NASDAQ. Currently, annual listing fees for NYSE range from \$59,500 to

<sup>10</sup> *Id.*

<sup>11</sup> See proposed Rule 14.601(b).

<sup>12</sup> See *supra* note 6 [sic].

<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> See Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR-NASDAQ-2014-087).

<sup>17</sup> Market capitalization estimates are based on Bloomberg data as of August 28, 2017. NYSE and NASDAQ listing fee estimates are based on listing fees reflected in Section 902 of the NYSE Listed Company Manual and the NASDAQ Rule 5900 Series (as applicable) and assumes (for NASDAQ) that each company paid the all-inclusive annual listing fee. Listing fee estimates are based on shares outstanding as reflected in Bloomberg data as of August 28, 2017.

\$500,000,<sup>18</sup> while annual listing fees for NASDAQ range from \$32,000 to \$155,000,<sup>19</sup> each depending on the company's total shares outstanding. The all-inclusive annual listing fees applicable to companies listed on the NASDAQ Global Select Market range from \$45,000–\$155,000.<sup>20</sup> IEX notes that its listing standards are substantially similar to the listing standards for NASDAQ Global Select market and therefore believes that it is most relevant to compare the IEX proposed all-inclusive annual listing fee to the NASDAQ Global Select Market all-inclusive annual listing fee range.

IEX also believes that it is reasonable to structure its fee as an all-inclusive fee. NASDAQ has begun to structure its annual listing fees as an all-inclusive fee, noting that such a fee structure simplifies billing and provides transparency and certainty to companies as to the annual cost of listing.<sup>21</sup> IEX also believes that such considerations warrant use of an all-inclusive fee.

IEX further believes that it is reasonable to provide a fee credit under the terms described in the Purpose section. Transferring a listing to a new exchange is a significant decision for a public company, and the Exchange anticipates that NYSE and NASDAQ will each actively seek to retain listed companies considering transferring their listing to IEX. Accordingly, the Exchange believes that although listing on IEX will provide certain benefits to issuers compared to listing on NYSE and NASDAQ—such as its investor and issuer focused model—the Exchange also believes that meaningful fee credits are initially necessary to establish its listing program quickly.

As the Commission has explicitly acknowledged, the current listing market is highly concentrated, noting that, “[e]ntrant exchanges cann . . . face barriers to entry related to reputation. Exchanges that enter the market may not be able to quickly establish a strong reputation for high quality listings, which may adversely affect their ability to compete with incumbent exchanges. This lack of reputation may discourage both investors and issuers from transacting or listing on an entrant exchange, which may reinforce an

entrant exchange's lack of reputation.”<sup>22</sup>

As proposed, IEX's fee credit is designed to address these significant competitive challenges, and quickly establish a strong reputation for high quality listings. Based on discussions with companies currently listed on NYSE and NASDAQ, the Exchange believes that a meaningful fee credit is necessary to incentivize currently listed companies to transfer their listing to IEX. In this regard, companies generally view a listing transfer as a long-term commitment and therefore the financial incentive should align with such long-term commitment. IEX further believes, based on these discussions, that in order to be meaningful the fee credit must accomplish two objectives: Provide at least five years of free listing and cover the listing fees already paid by the company in the year of listing on IEX.<sup>23</sup> In order to address both objectives, the fee credit will be for a minimum of \$250,000 (to cover five years of listing fees) or the greater of the amount of any nonrefundable listing fee actually paid by the company to another listing exchange during the calendar year in which it lists on IEX if the company is no longer listed on such other exchange upon listing on IEX.

Further, the Exchange believes that it is reasonable, and consistent with an equitable allocation of listing fees to provide a larger fee credit to companies that have already paid comparatively larger listing fees to NYSE or NASDAQ, which for some NYSE companies is as high as \$500,000.<sup>24</sup> In this regard, the Exchange believes that an NYSE or NASDAQ listed company that has paid such larger listing fees may require a corresponding credit in order to incentivize the company to transfer its listing to IEX. Accordingly, the Exchange believes that providing an enhanced credit is not an inequitable allocation of fees because it merely operates to address the potential disincentive to list that may exist for a company that has paid listing fees higher than \$250,000. All similarly situated companies will receive the same credit.

The Exchange notes that there is precedent to provide a listing fee credit

based on the amount of listing fees paid to another exchange. For example, NASDAQ Rules provide that NASDAQ waives a portion of its annual fee in the case of securities that transfer to NASDAQ, by providing such companies with a credit in the pro-rated amount of any annual listing fee paid to its prior listing exchange for the period of time after the transfer, which is used to offset NASDAQ listing fees for the first year of listing.<sup>25</sup> In its rule filing adopting this credit,<sup>26</sup> NASDAQ (then a subsidiary of the National Association of Securities Dealers, Inc.), noted that the credit would remove impediments to and perfect the mechanism of a free and open market and a national market system by removing an impediment to issuers transferring from another market to NASDAQ. Similarly, IEX's proposed enhanced listing fee credit for a company that paid more than \$250,000 in listing fees in the year of its transfer to IEX is designed to incentivize such companies to transfer to IEX by providing a credit for listing fees actually paid to another exchange in the year of transfer, thereby removing a potential impediment to such transfers. Further, the Exchange notes that NYSE and Nasdaq each offer incentives to certain listed companies that transfer from the other market in the form of specified products and services that are valued as high as \$757,500 for a transfer from NYSE to Nasdaq and \$263,000 for a transfer from Nasdaq to NYSE.<sup>27</sup> Similarly, the IEX's proposed credit is designed to incentivize companies listed on other markets to transfer their listing to IEX. Thus, IEX believes that the monetary value of its proposed fee credit transfer incentives is comparable

<sup>25</sup> See NASDAQ IM-5900-4 (Waiver of Certain Annual Listing Fees Upon Transfer of a Non-Nasdaq Exchange Listed Security).

<sup>26</sup> See Securities Exchange Act Release No. 53696 (April 21, 2006), 71 FR 25273 (April 28, 2006) (SR-NASD-2006-047).

<sup>27</sup> See Section 907.00 of the NYSE Listed Company Manual and Nasdaq Rule IM-5900-7. The Exchange notes that the transfer incentive values are provided over multiple years. Further, the value of the Nasdaq incentives noted are for listed companies with a market capitalization of \$5 billion that transfer from NYSE to the Nasdaq Global Market or Global Select Market. Listed companies that transfer from NYSE to the Nasdaq Global Market or Global Select Market with market capitalization of up to \$750 million and between \$750 million or more but less than \$5 million [sic] receive incentives over multiple years in the form of specified products and services valued at an aggregate of \$144,500 and \$553,500 respectively. The value of the NYSE incentives noted are for listed companies with a global market value of \$400 million or more that transfer from another national securities exchange to NYSE. Listed companies with a global market value of less than \$400 million receive incentives over 24 calendar months in the form of specified products and services valued at \$153,000.

<sup>18</sup> See Sections 902.02 and 902.03 of the NYSE Listed Company Manual.

<sup>19</sup> See NASDAQ Rule 5920(c) for NASDAQ Capital Market annual fees, Rule 5910(c) for NASDAQ Global and Global Select annual fees, and IM-5910-1 for the all inclusive annual listing fees applicable to companies listed on the NASDAQ Global Market (including the Global Select Market).

<sup>20</sup> *Id.*

<sup>21</sup> See, e.g., Securities Exchange Act Release No. 78149 (June 24, 2016), 81 FR 42388 (June 29, 2016) (SR-NASDAQ-2016-085).

<sup>22</sup> See Securities Act Release No. 10390 (July 14, 2017), 82 FR 33839 (July 21, 2017) (File No. S7-06-17).

<sup>23</sup> In the event that the Exchange proposes increases to its listing fees, such increases will include a grandfathering provision for companies that have remaining credits available so that each such company obtains the contemplated years of free listing as proposed herein, subject to Commission filing and effectiveness.

<sup>24</sup> See Section 902 of the NYSE Listed Company Manual.

to the monetary value of the transfer incentives offered by NYSE and NASDAQ.

Moreover, as discussed above, both NYSE and NASDAQ charge listing fees predominantly based on the number of shares outstanding, such that a company with fewer shares outstanding is generally charged a lower listing fee than a company with a larger number of shares outstanding. By providing a higher credit to a company that has paid listing fees in excess of \$250,000 to NYSE, the IEX credit is designed to take into account the fact that some issuers have been subject to higher fees based on their number of shares outstanding, and to provide issuers a credit incentive on that basis.

The Exchange believes that limiting the fee credit to companies that announce their intent to transfer listing to IEX prior to or within 120 calendar days of the first IEX listing, as described in the Purpose Section, will operate as an incentive to companies listed on NYSE or NASDAQ to transfer their listing to IEX expeditiously in order to enable the Exchange to achieve critical mass relatively quickly, in a highly competitive environment. As described in the Purpose Section, the Exchange will provide notice to the issuer community on the day when the first listing occurs, and IEX believes that the 120 calendar day period will provide ample time for any company that meets IEX's listing requirements to successfully complete the clearance<sup>28</sup> and application processes,<sup>29</sup> issue the required press release within 120 calendar days of the first IEX listing, and thus receive the fee credit. As the Commission has noted, and as discussed above, if a new listing exchange does not quickly establish a strong reputation for high quality listings, it may adversely affect its ability to compete with incumbent exchanges.<sup>30</sup> Structuring the availability of the fee credit within the specified time window is designed to address the imperative to quickly establish a strong reputation for high quality listings.

The Exchange believes that this structure is reasonable, not an inequitable allocation of fees, and not unfairly discriminatory since while the time window is open any company that meets IEX's listing standards will be able to make a decision to list on IEX, make the requisite announcement, and obtain the fee credit once it lists on IEX. While a company that is not in

existence at that time would not be able to take the actions necessary to obtain a fee credit, IEX does not believe that this issue means that the fee credit is inequitable or unfairly discriminatory. NASDAQ provides several other categories of fee incentives to companies that transfer to NASDAQ from another exchange. These include an entry fee waiver, as well as a "grandfathering" incentive related to the all-inclusive annual listing fee whereby the company's fee is based on the lower of its shares outstanding as of the date of listing or at the time of billing. For example, NASDAQ provides an accommodation to companies that applied to list on NASDAQ prior to January 1, 2015 and list after that date whereby such companies are billed based on the lower of its shares outstanding at the time of application of listing.<sup>31</sup> Thus companies that apply to list on NASDAQ after January 1, 2015 are not able to take advantage of this accommodation, including companies that did not exist prior to January 1, 2015. In its rule filing proposing this accommodation, NASDAQ asserts that it is consistent with the Act based on competitive considerations.<sup>32</sup> Similarly, IEX's proposed fee credit is designed to address competitive considerations (as discussed above) and is thus also consistent with the Act. Accordingly, IEX believes that the timing of availability of the fee credit to individual companies does not raise any new or novel issues not already considered by the Commission.

Finally, IEX believes that it is consistent with the protection of investors, the public interest and removing impediments to a free and open market and a national market system to provide a pro-rata refund of the annual listing fee to a company that ceases to be listed on IEX during the calendar year for which such fee was paid. In this regard, IEX further believes that if a company ceases to be listed on IEX, either because of a corporate action (e.g., merger, acquisition, going private transaction) or delisting (whether voluntary or otherwise), the company will not have received listing for the entire year and therefore should not be required to pay for the entire year. IEX notes that NYSE and NASDAQ listing fees are nonrefundable, and believes that this structure can have an anticompetitive impact on the listing market since companies may be hesitant

to transfer listing mid-year, thus forgoing the benefits of a nonrefundable listing fee already paid. In contrast, IEX's proposal to provide a pro-rata refund is designed to be pro-competitive by providing listed companies with the ability to transfer listing mid-year without financial penalty.

In conclusion, the Exchange submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act for the reasons discussed above in that it is an equitable allocation of fees, does not permit unfair discrimination between customers, issuers, brokers, or dealers, and 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. For the foregoing reasons, the Exchange also believes that its simplified fee structure is consistent with the Act, in that it is designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system and in general to protect investors and the public interest.

#### *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 does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed listing fee structure is designed to provide a competitive alternative to listing on NYSE or NASDAQ. The Exchange operates in a highly competitive market in which issuers can readily favor competing listing exchanges if fee schedules and services at such other exchanges are viewed as more favorable. As a new listing exchange, IEX expects to face intense competition from NYSE and NASDAQ. Consequently, the Exchange believes that the degree to which IEX fees could impose any burden on competition is extremely limited, and does not believe that such fees would burden competition among issuers or with competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange also notes that other listing venues are similarly free to set their fees.

The Exchange does not believe that the proposed rule change will impose

<sup>28</sup> See IEX Rule 14.201.

<sup>29</sup> See IEX Rule 14.202.

<sup>30</sup> See *supra* note 22 [sic], Section VI., Economic Analysis at 33842.

<sup>31</sup> See, e.g., NASDAQ IM-5910-1(b)(2) (All-Inclusive Annual Listing Fee).

<sup>32</sup> See Securities Exchange Act Release No. 74472 (March 11, 2015), 80 FR 13925 (March 17, 2015) (SR-NASDAQ-2015-017).

any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different issuers will be eligible for different fee credits, these different fee credits are not based on the type of listed company but on the timing of listing on IEX and, when a higher credit is provided, on the listing fees already paid to its prior listing exchange. As discussed in the Statutory Basis section, limiting fee credits to companies that issue the required press release prior to or within 120 calendar days of the first IEX listing is designed to incentivize companies to transfer to IEX expeditiously in order to gain critical mass quickly. Further, providing a higher fee credit to companies that paid nonrefundable listing fees of more than \$250,000 to another listing exchange during the calendar year in which it lists on IEX is designed to provide a meaningful incentive to such companies to transfer their listing to IEX. All similarly situated issuers would be treated similarly since the higher credit would be based on the amount of the listing fee paid.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>33</sup> of the Act.

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)<sup>34</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2017-30 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-2017-30. 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-IEX-2017-30 and should be submitted on or before October 23, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-21002 Filed 9-29-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-81733; File No. SR-NASDAQ-2017-081]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Withdrawal of a Proposed Rule Change To Extend the Implementation Date for Certain Changes to the Rule 5700 Series and Rule 5810**

September 27, 2017.

On August 7, 2017, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to extend the implementation date for certain changes concerning the continued listing requirements for exchange-traded products in the Nasdaq Rule 5700 Series and related changes to Nasdaq Rule 5810. The proposed rule change was published for comment in the **Federal Register** on August 22, 2017.<sup>3</sup> The Commission received one comment letter on the proposed rule change.<sup>4</sup> On September 22, 2017, Nasdaq withdrew the proposed rule change (SR-NASDAQ-2017-081).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-21159 Filed 9-29-17; 8:45 am]

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 81406 (August 16, 2017), 82 FR 39920.

<sup>4</sup> See letter from Jane Heinrichs, Associate General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, Commission, dated September 1, 2017.

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>33</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>34</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81721; File No. SR–NYSEArca–2017–85]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Equities Rule 8.700 to Reference EURO STOXX 50 Volatility Index Futures and To List and Trade Shares of the ProShares European Volatility Futures ETF

September 26, 2017.

On July 28, 2017, NYSE Arca, Inc. filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Arca Equities Rule 8.700 to add EURO STOXX 50 Volatility Index (VSTOXX®) futures to the financial instruments that an issue of Managed Trust Securities may hold; and (2) to list and trade shares of the ProShares European Volatility Futures ETF under proposed amended NYSE Arca Equities Rule 8.700. The proposed rule change was published for comment in the *Federal Register* on August 16, 2017.<sup>3</sup> On September 21, 2017, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act<sup>5</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 30, 2017. The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate

a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> designates November 14, 2017, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2017–85), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–21000 Filed 9–29–17; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81720; File No. 4–631]

### Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Fifteenth Amendment to the National Market System Plan To Address Extraordinary Market Volatility by Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.

September 26, 2017.

#### I. Introduction

On August 31, 2017, NYSE Group, Inc., on behalf of the following parties to the National Market System Plan to Address Extraordinary Market Volatility (“the Plan”):<sup>1</sup> Bats BZX Exchange, Inc.,

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30–3(a)(31).

<sup>1</sup> On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. *See* Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4–631). On February 20, 2013, the Commission noticed for immediate effectiveness the Second Amendment to the Plan. *See* Securities Exchange Act Release No. 68953, 78 FR 13113 (February 26, 2013). On April 3, 2013, the Commission approved the Third Amendment to the Plan. *See* Securities Exchange Act Release No. 69287, 78 FR 21483 (April 10, 2013). On August 27, 2013, the Commission noticed for immediate effectiveness the Fourth Amendment to the Plan. *See* Securities Exchange Act Release No. 70273, 78 FR 54321 (September 3, 2013). On September 26, 2013, the Commission approved the Fifth Amendment to the Plan. *See* Securities Exchange Act Release No. 70530, 78 FR 60937 (October 2,

Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., the Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC (“Nasdaq”), New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., NYSE American LLC, and NYSE National Inc. (collectively, the “Participants”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> and Rule 608 thereunder,<sup>3</sup> a proposal to amend the Plan (“Fifteenth Amendment”).<sup>4</sup> The proposal reflects changes unanimously approved by the Participants. The Fifteenth Amendment proposes to extend the implementation date for the twelfth amendment to the Plan (“Twelfth Amendment”) and related changes from the thirteenth amendment to the Plan (“Amendment 13 Changes”) set out in the fourteenth amendment to the Plan (“Fourteenth Amendment”), as discussed below.<sup>5</sup> The Participants are filing the Fifteenth Amendment for immediate effectiveness pursuant to

2013). On January 7, 2014, the Commission noticed for immediate effectiveness the Sixth Amendment to the Plan. *See* Securities Exchange Act Release No. 71247, 79 FR 2204 (January 13, 2014). On April 3, 2014, the Commission approved the Seventh Amendment to the Plan. *See* Securities Exchange Act Release No. 71851, 79 FR 19687 (April 9, 2014). On February 19, 2015, the Commission approved the Eight Amendment to the Plan. *See* Securities Exchange Act Release No. 74323, 80 FR 10169 (February 25, 2015). On October 22, 2015, the Commission approved the Ninth Amendment to the Plan. *See* Securities Exchange Act Release No. 76244, 80 FR 66099 (October 28, 2015). On April 21, 2016, the Commission approved the Tenth Amendment to the Plan. *See* Securities Exchange Act Release No. 77679, 81 FR 24908 (April 27, 2016). On August 26, 2016, the Commission noticed for immediate effectiveness the Eleventh Amendment to the Plan. *See* Securities Exchange Act Release No. 78703, 81 FR 60397 (September 1, 2016). On January 19, 2017, the Commission approved the Twelfth Amendment to the Plan. *See* Securities Exchange Act Release No. 79845, 82 FR 8551 (January 26, 2017). On April 13, 2017, the Commission approved the Thirteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 80455, 82 FR 18519 (April 19, 2017). On April 28, 2017, the Commission noticed for immediate effectiveness the Fourteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 80549, 82 FR 20928 (May 4, 2017).

<sup>2</sup> 15 U.S.C 78k–1(a)(3).

<sup>3</sup> 17 CFR 242.608.

<sup>4</sup> *See* Letter from Elizabeth King, General Counsel and Corporate Secretary, NYSE, to Brent Fields, Secretary, Commission, dated August 30, 2017 (“Transmittal Letter”).

<sup>5</sup> The Participants also propose a non-substantive amendment to the Plan text to reflect the name change of NYSE MKT LLC to NYSE American LLC. *See* Securities Exchange Act Release No. Securities Exchange Act Release No. 80283 (March 21, 2017), 82 FR 15244 (March 27, 2017) (SR–NYSEMKT–2017–14).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> *See* Securities Exchange Act Release No. 81373 (August 10, 2017), 82 FR 38973.

<sup>4</sup> Amendment No. 1 replaces and supersedes the original filing in its entirety. Amendment No. 1 is located at: <https://www.sec.gov/comments/sr-nysearca-2017-85/nysearca201785-2589875-161110.pdf>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

Rule 608(b)(3)(iii) of Regulation NMS (“Rule 608”) under the Exchange Act.<sup>6</sup> The Commission is publishing this notice to solicit comments from interested persons.<sup>7</sup>

## II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the Fourteenth Amendment, along with the information required by Rule 608(a)(4) and (5) under the Exchange Act,<sup>8</sup> prepared and submitted by the Participants to the Commission.<sup>9</sup>

### A. Statement of Purpose and Summary of the Plan Amendment

The Participants filed the Plan on April 5, 2011, to create a market-wide limit up-limit down mechanism intended to address extraordinary market volatility in NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act. The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would prevent trades in individual NMS Stocks from occurring outside of the specified price bands. These limit up-limit down requirements are coupled with Trading Pauses,<sup>10</sup> as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted this Plan to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.

As set forth in more detail in the Plan, all trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down requirements specified in the Plan. More specifically, the Processor responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act will be responsible for calculating and disseminating a lower price band and upper price band, as provided for in Section V of the Plan. Section VI of the Plan sets forth the limit up-limit down requirements of the Plan, and in particular, that all trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants,

shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the lower price band or above the upper price band for an NMS Stock, consistent with the Plan.

The changes approved by the Commission in the twelfth amendment to the Plan provide that a Trading Pause will continue until the Primary Listing Exchange has reopened trading using its established reopening procedures, and to require that trading centers not resume trading in an NMS Stock following a Trading Pause without Price Bands for such NMS Stock. In the Statement of Purpose filed with the twelfth amendment, the Participants stated that the changes described in the twelfth amendment would be implemented no later than six months after approval of that amendment. Based on the fourteenth amendment to the Plan, the twelfth amendment must be implemented no later than the end of the third quarter of 2017.

Because the SIP technology changes necessary to implement the twelfth amendment to the Plan and the Amendment 13 Changes will not be ready by September 30, 2017, the Participants are filing this proposal to change the implementation date for the changes to the Plan set forth in the twelfth amendment and the Amendment 13 Changes to no later than November 30, 2017. Specifically, the CQS and CTA SIPs are in the process of upgrading to binary message type formats over their multicast channels and the changes described in the twelfth and thirteenth amendments to the Plan are scheduled to be implemented together with these upgrades. SIAC has announced revised implementation dates for the implementation of the CQS and CTA new binary formats, which impacts the implementation dates for SIAC’s implementation of the twelfth amendment to the Plan and the Amendment 13 Changes.<sup>11</sup>

Because of a dependency on certain SIP technology changes, certain Primary Listing Exchanges will not be ready to implement the changes to their automated reopening processes following a Trading Pause, which were made pursuant to exchange rule filings in conjunction with the twelfth amendment to the Plan, by September 30, 2017. To provide for a standardized approach that would allow for extensions of a Trading Pause by the

Primary Listing Exchange if equilibrium cannot be met to establish a Reopening Price within specified parameters (“automated reopening changes”), the Primary Listing Exchanges amended their rules for automated reopenings.<sup>12</sup> The Primary Listing Exchanges anticipate implementing the automated reopening changes commensurate with implementation of the twelfth amendment to the Plan and the Amendment 13 Changes.<sup>13</sup>

Accordingly, both to provide time to support the technology changes for the twelfth amendment to the Plan and to align the implementation date of the twelfth amendment and the

Amendment 13 Changes with the implementation timeline for the automated reopening changes by the Primary Listing Exchanges, the Participants propose to change the implementation date for the changes in the twelfth amendment to the Plan and the Amendment 13 Changes to no later than November 30, 2017. This proposed change does not require any changes to the text of the Plan.

The Participants believe that the proposed modification to the implementation schedule is technical and ministerial in nature because it simply extends the implementation period for the twelfth amendment to the Plan and does not change any substantive elements of the Plan.<sup>14</sup> The Participants believe that the proposal to extend the implementation schedule is consistent with the goal of the twelfth amendment to the Plan, which is to reduce the potential for sequential Trading Pauses in an NMS Stock by centralizing the reopening process through the Primary Listing Exchanges, because it would align the implementation schedule for the twelfth amendment to the Plan with the implementation schedule for the automated reopening changes. The proposed amendment would therefore protect investors and the public interest

<sup>12</sup> See Securities Exchange Act Release Nos. 79846 (January 19, 2017), 82 FR 8548 (January 26, 2017) (SR-NYSEArca-2016-130) (Approval Order); 79884 (January 26, 2017), 82 FR 8968 (February 1, 2017) (SR-BatsBZX-2016-61) (Approval Order); 79876 (January 25, 2017), 82 FR 8888 (January 31, 2017) (SR-Nasdaq-2016-131) (Approval Order).

<sup>13</sup> In other words, the Participants expect that both the changes pursuant to the twelfth amendment and the Primary Listing Exchange automated reopening changes would become operative at the same time.

<sup>14</sup> See, e.g., Securities Exchange Act Release Nos. 70273 (amending Section VIII.B of the Plan to establish a new implementation schedule for Phase II of the Plan) and 71247 (amending Section VIII.B of the Plan to establish a new implementation schedule for Phase II of the Plan), *supra* note 1.

<sup>6</sup> 17 CFR 242.608(b)(3)(iii).

<sup>7</sup> 17 CFR 242.608(b)(1).

<sup>8</sup> See 17 CFR 242.608(a)(4) and (a)(5).

<sup>9</sup> See Transmittal Letter, *supra* note 4.

<sup>10</sup> Unless otherwise specified, the terms used herein have the same meaning as set forth in the Plan.

<sup>11</sup> See Updated CQS and CTS Multicast Output Binary Formats: Testing and Implementation Schedule Update 7, available here: [https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTS\\_CQS%20New%20Binary%20Formats\\_Update\\_v7\\_06262017.pdf](https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTS_CQS%20New%20Binary%20Formats_Update_v7_06262017.pdf).

and is appropriate to the maintenance of fair and orderly markets.

#### *B. Governing or Constituent Documents*

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan, but once the Plan is implemented, the Processor's obligations will change, as set forth in detail in the Plan.

#### *C. Implementation of Plan*

The initial date of the Plan operations was April 8, 2013.

#### *D. Development and Implementation Phases*

The Plan was initially implemented as a one-year pilot program in two Phases, consistent with Section VIII of the Plan: Phase I of Plan implementation began on April 8, 2013 and was completed on May 3, 2013. Implementation of Phase II of the Plan began on August 5, 2013 and was completed on February 24, 2014. The tenth amendment to the Plan was implemented on July 18, 2016. Pursuant to the proposed thirteenth amendment to the Plan, the Participants propose [sic] to extend the pilot period until April 16, 2018.<sup>15</sup> Currently, the Participants must implement the twelfth amendment to the Plan to no later than the end of the third quarter of 2017. Pursuant to this proposed amendment, the Participants propose to extend the time frame to implement the twelfth amendment to the Plan and the Amendment 13 Changes to no later than November 30, 2017.

#### *E. Analysis of Impact on Competition*

The proposed Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

#### *F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan*

The Participants have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

#### *G. Approval of Amendment of the Plan*

Each of the Plan's Participants has executed a written amended Plan.

#### *H. Terms and Conditions of Access*

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

#### *I. Method of Determination and Imposition, and Amount of, Fees and Charges*

Not applicable.

#### *J. Method and Frequency of Processor Evaluation*

Not applicable.

#### *K. Dispute Resolution*

Section III(C) of the Plan provides that each Participant shall designate an individual to represent the Participant as a member of an Operating Committee. No later than the initial date of the Plan, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608.

On July 19, 2017, the Operating Committee, duly constituted and chaired by Mr. Robert Books of Bats, met and voted unanimously to amend the Plan as set forth herein in accordance with Section III(C) of the Plan. The Plan Advisory Committee was notified in connection with the Fifteenth Amendment and was in favor.

### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Exchange Act and the rules thereunder. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-631 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 4-631. This file number should be included on the subject line if e-mail 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 plan amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the Participants' offices. 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 4-631 and should be submitted on or before October 23, 2017.

By the Commission.

**Brent J. Fields,**  
Secretary.

### **ATTACHMENT A**

Proposed new language is *italicized*; proposed deletions are in [brackets].

<sup>15</sup> See Securities Exchange Act Release No. 80455 (order approving the thirteenth amendment to the Plan), *supra* note 1.

**PLAN TO ADDRESS EXTRAORDINARY  
MARKET VOLATILITY SUBMITTED TO  
THE SECURITIES AND EXCHANGE  
COMMISSION PURSUANT TO RULE 608  
OF REGULATION NMS UNDER THE  
SECURITIES EXCHANGE ACT OF 1934**

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**Preamble**

The Participants submit to the SEC this Plan establishing procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets. The Participants developed this Plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act, which authorizes the Participants to act jointly in preparing, filing, and implementing national market system plans.

**I. Definitions**

(A) “Eligible Reported Transactions” shall have the meaning prescribed by the Operating Committee and shall generally mean transactions that are eligible to update the last sale price of an NMS Stock.

(B) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(C) “Limit State” shall have the meaning provided in Section VI of the Plan.

(D) “Limit State Quotation” shall have the meaning provided in Section VI of the Plan.

(E) “Lower Price Band” shall have the meaning provided in Section V of the Plan.

(F) “Market Data Plans” shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

(G) “National Best Bid” and “National Best Offer” shall have the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(H) “NMS Stock” shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(I) “Opening Price” shall mean the price of a transaction that opens trading on the Primary Listing Exchange. If the Primary Listing Exchange opens with quotations, the “Opening Price” shall mean the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no such closing price exists, the last sale on the Primary Listing Exchange.

(J) “Operating Committee” shall have the meaning provided in Section III(C) of the Plan.

(K) “Participant” means a party to the Plan.

(L) “Plan” means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(M) “Percentage Parameter” shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan.

(N) “Price Bands” shall have the meaning provided in Section V of the Plan.

(O) “Primary Listing Exchange” shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

(P) “Processor” shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Q) “Pro-Forma Reference Price” shall have the meaning provided in Section V(A)(2) of the Plan.

(R) “Reference Price” shall have the meaning provided in Section V of the Plan.

(S) “Regular Trading Hours” shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

(T) “Regulatory Halt” shall have the meaning specified in the Market Data Plans.

(U) “Reopening Price” shall mean the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations.

(V) “SEC” shall mean the United States Securities and Exchange Commission.

(W) “Straddle State” shall have the meaning provided in Section VII(A)(2) of the Plan.

(X) “Trading center” shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(Y) “Trading Pause” shall have the meaning provided in Section VII of the Plan.

(Z) “Upper Price Band” shall have the meaning provided in Section V of the Plan.

**II. Parties**

*(A) List of Parties*

The parties to the Plan are as follows:

- (1) Bats BZX Exchange, Inc.  
8050 Marshall Drive  
Lenexa, Kansas 66214
- (2) Bats BYX Exchange, Inc.  
8050 Marshall Drive  
Lenexa, Kansas 66214

(3) Bats EDGA Exchange, Inc.  
8050 Marshall Drive  
Lenexa, Kansas 66214

(4) Bats EDGX Exchange, Inc.  
8050 Marshall Drive  
Lenexa, Kansas 66214

(5) Chicago Stock Exchange, Inc.  
440 South LaSalle Street  
Chicago, Illinois 60605

(6) Financial Industry Regulatory Authority, Inc.  
1735 K Street, NW  
Washington, DC 20006

(7) Investors Exchange LLC  
4 World Trade Center, 44th Floor  
New York, New York 10007

(8) NASDAQ BX, Inc.  
One Liberty Plaza  
New York, New York 10006

(9) NASDAQ PHLX LLC  
1900 Market Street  
Philadelphia, Pennsylvania 19103

(10) The Nasdaq Stock Market LLC  
1 Liberty Plaza  
165 Broadway  
New York, NY 10006

(11) NYSE National, Inc.  
11 Wall Street  
New York, NY 10005

(12) New York Stock Exchange LLC  
11 Wall Street  
New York, New York 10005

(13) NYSE [MKT] American LLC  
11 Wall Street  
New York, New York 10005

(14) NYSE Arca, Inc.  
11 Wall Street  
New York, New York 10005

*(B) Compliance Undertaking*

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with and to enforce compliance, as required by Rule 608(c) of Regulation NMS under the Exchange Act, by its members with the provisions of the Plan. To this end, each Participant shall adopt a rule requiring compliance by its members with the provisions of the Plan, and each Participant shall take such actions as are necessary and appropriate as a participant of the Market Data Plans to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in this Plan.

*(C) New Participants*

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III (B) of the Plan.

*(D) Advisory Committee*

- (1) *Formation.* Notwithstanding other provisions of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.
- (2) *Composition.* Members of the Advisory Committee shall be selected for two-year terms as follows:

(A) *Advisory Committee Selections.* By affirmative vote of a majority of the Participants, the Participants shall select at least one representatives from each of the following categories to be members of the Advisory Committee: (1) a broker-dealer with a substantial retail investor customer base; (2) a broker-dealer with a substantial institutional investor customer base; (3) an alternative trading system; (4) a broker-dealer that primarily engages in trading for its own account; and (5) an investor.

(3) *Function.* Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, proposed material amendments to the Plan.

(4) *Meetings and Information.* Members of the Advisory Committee shall have the right to attend meetings of the Operating Committee and to receive any information concerning Plan matters; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants, the Operating Committee determines that an item of Plan business requires confidential treatment.

### III. Amendments to Plan

#### (A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (1) sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and, (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

#### (B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment shall be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

#### (C) Operating Committee

(1) Each Participant shall select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and shall be considered a voting member thereof only in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee shall monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee shall establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan and the Appendixes thereto. With respect to matters in this paragraph, Operating Committee decisions shall be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

### IV. Trading Center Policies and Procedures

All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up—limit down requirements specified in Sections VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

### V. Price Bands

#### (A) Calculation and Dissemination of Price Bands

(1) The Processor for each NMS stock shall calculate and disseminate to the public a Lower Price Band and an Upper Price Band during Regular Trading Hours for such NMS Stock. The Price Bands shall be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings, which are addressed below). If no Eligible Reported Transactions for the NMS Stock have occurred over the immediately preceding five-minute period, the previous Reference Price shall remain in effect. The Price Bands for an NMS Stock shall be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. The Price Bands shall be calculated during Regular Trading Hours. Between 9:30 a.m. and 9:45 a.m. ET, and 3:35 p.m. and 4:00 p.m. ET, or in the case of an early scheduled close, during the last 25 minutes of trading before the early scheduled close, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A. If the Processor has not yet disseminated Price Bands, but a Reference Price is available, a trading center may calculate and apply Price Bands based on the same Reference Price that the Processor would use for calculating such Price Bands until such trading center receives Price Bands from the Processor. If,

under Section VII(B)(2), the Primary Listing Exchange notifies the Processor that it is unable to reopen an NMS Stock due to a systems or technology issue and it has not declared a Regulatory Halt, the Processor will calculate and disseminate Price Bands by applying triple the Percentage Parameters set forth in Appendix A for the first 30 seconds such Price Bands are disseminated.

(2) The Processor shall calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma Reference Price has not moved by 1% or more from the Reference Price currently in effect, no new Price Bands shall be disseminated, and the current Reference Price shall remain the effective Reference Price. When the Pro-Forma Reference Price has moved by 1% or more from the Reference Price currently in effect, the Pro-Forma Reference Price shall become the Reference Price, and the Processor shall disseminate new Price Bands based on the new Reference Price; provided, however, that each new Reference Price shall remain in effect for at least 30 seconds.

#### (B) Openings

(1) Except when a Regulatory Halt is in effect at the start of Regular Trading Hours, the first Reference Price for a trading day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of Regular Trading Hours. During the period less than five minutes after the Opening Price, a Pro-Forma Reference Price shall be updated on a continuous basis to be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock during the period following the Opening Price (including the Opening Price), and if it differs from the current Reference Price by 1% or more shall become the new Reference Price, except that a new Reference Price shall remain in effect for at least 30 seconds. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) If the Opening Price on the Primary Listing Exchange in an NMS Stock does not occur within five minutes after the start of Regular Trading Hours, the first Reference Price for a trading day shall be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

#### (C) Reopenings

(1) Following a Trading Pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, if the Primary Listing Exchange reopens trading with a transaction or quotation that does not include a zero bid or zero offer, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange. Subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If the Primary Listing Exchange notifies the Processor that it is unable to reopen an NMS Stock due to a systems or technology issue,

or if the Primary Listing Exchange reopens trading with a quotation that has a zero bid or zero offer, or both, the next Reference Price shall be the last effective Price Band that was in a Limit State before the Trading Pause. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) Following a Regulatory Halt, the next Reference Price shall be the Opening or Reopening Price on the Primary Listing Exchange if such Opening or Reopening Price occurs within five minutes after the end of the Regulatory Halt, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Opening or Reopening Price has not occurred within five minutes after the end of the Regulatory Halt, the Reference Price shall be equal to the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

## VI. Limit Up—Limit Down Requirements

### (A) Limitations on Trades and Quotations Outside of Price Bands

(1) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS Stock. Single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both (i) does not update the last sale price (except if solely because the transaction was reported late or because the transaction was an odd-lot sized transaction), and (ii) is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.

(2) When a National Best Bid is below the Lower Price Band or a National Best Offer is above the Upper Price Band for an NMS Stock, the Processor shall disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to the Lower Price Band or a National Best Bid is equal to the Upper Price Band for an NMS Stock, the Processor shall distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a "Limit State Quotation".

(3) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor shall disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; provided,

however, that any such bid or offer shall not be included in National Best Bid or National Best Offer calculations.

### (B) Entering and Exiting a Limit State

(1) All trading for an NMS Stock shall immediately enter a Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer.

(2) When trading for an NMS Stock enters a Limit State, the Processor shall disseminate this information by identifying the relevant quotation (*i.e.*, a National Best Offer that equals the Lower Price Band or a National Best Bid that equals the Upper Price Band) as a Limit State Quotation. At this point, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V.

(3) Trading for an NMS Stock shall exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled.

(4) If trading for an NMS Stock exits a Limit State within 15 seconds of entry, the Processor shall immediately calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State).

(5) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause pursuant to Section VII of the Plan or at the end of Regular Trading Hours.

## VII. Trading Pauses

### (A) Declaration of Trading Pauses

(1) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor.

(2) The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State, which is when National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address extraordinary market volatility. The Primary Listing Exchange shall develop policies and procedures for determining when it would declare a Trading Pause in such circumstances. If a Trading Pause is declared for an NMS Stock under this provision, the Primary Listing Exchange shall notify the Processor.

(3) The Processor shall disseminate Trading Pause information to the public. No trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.

### (B) Reopening of Trading During Regular Trading Hours

(1) Five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established reopening procedures. The Processor will publish the following information that the Primary Listing Exchange provides to the Processor in connection with such reopening: auction reference price; auction collars; and number of extensions to the reopening auction. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.

(2) The Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock due to a systems or technology issue and if it has not declared a Regulatory Halt. The Processor shall disseminate this information to the public.

(3) Trading centers may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock.

(4) The Processor shall update the Price Bands as set forth in Section V(C)(1)–(2) of the Plan after receiving notification from the Primary Listing Exchange of a Reopening Price following a Trading Pause (or a resume message in the case of a reopening quote that has a zero bid or zero offer, or both) or that it is unable to reopen trading following a Trading Pause due to a systems or technology issue, provided that if the Primary Listing Exchange is unable to reopen due to a systems or technology issue, the update to the Price Bands will be no earlier than ten minutes after the beginning of the Trading Pause.

### (C) Trading Pauses Within Ten Minutes of the End of Regular Trading Hours

(1) If an NMS Stock is in a Trading Pause during the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen trading and shall attempt to execute a closing transaction using its established closing procedures. All trading centers may begin trading the NMS Stock when the Primary Listing Exchange executes a closing transaction.

(2) If the Primary Listing Exchange does not execute a closing transaction within five minutes after the end of Regular Trading Hours, all trading centers may begin trading the NMS Stock.

## VIII. Implementation

The initial date of Plan operations shall be April 8, 2013.

The Plan shall be implemented on a pilot basis set to end on April 16, 2018.

## IX. Withdrawal from Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

## X. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need

contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the \_\_\_\_ day of *August 2017* [February 2017] by each of the parties hereto.

BATS BZX EXCHANGE, INC.

BY: \_\_\_\_\_

BATS EDGA EXCHANGE, INC.

BY: \_\_\_\_\_

CHICAGO STOCK EXCHANGE, INC.

BY: \_\_\_\_\_

INVESTORS EXCHANGE LLC

BY: \_\_\_\_\_

NASDAQ PHLX LLC

BY: \_\_\_\_\_

NYSE NATIONAL, INC.

BY: \_\_\_\_\_

NYSE [MKT] *American* LLC

BY: \_\_\_\_\_

BATS BYX EXCHANGE, INC.

BY: \_\_\_\_\_

BATS EDGX EXCHANGE, INC.

BY: \_\_\_\_\_

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

BY: \_\_\_\_\_

NASDAQ BX, Inc.

BY: \_\_\_\_\_

THE NASDAQ STOCK MARKET LLC

BY: \_\_\_\_\_

NEW YORK STOCK EXCHANGE LLC

BY: \_\_\_\_\_

NYSE ARCA, INC.

BY: \_\_\_\_\_

## Appendix A—Percentage Parameters

### I. Tier 1 NMS Stocks

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index,

the Russell 1000 Index, and the exchange-traded products (“ETP”) identified as Schedule 1 to this Appendix. Schedule 1 to the Appendix will be reviewed and updated semi-annually based on the fiscal year by the Primary Listing Exchange to add ETPs that meet the criteria, or delete ETPs that are no longer eligible. To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded and the list will be sorted by notional consolidated average daily volume (“CADV”). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over \$2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock. The semi-annual updates to Schedule 1 do not require an amendment to the Plan. The Primary Listing Exchanges will maintain the updated Schedule 1 on their respective websites.

(2) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price more than \$3.00 shall be 5%.

(3) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price equal to \$0.75 and up to and including \$3.00 shall be 20%.

(4) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price less than \$0.75 shall be the lesser of (a) \$0.15 or (b) 75%.

(5) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS

Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

### II. Tier 2 NMS Stocks

(1) Tier 2 NMS Stocks shall include all NMS Stocks other than those in Tier 1, provided, however, that all rights and warrants are excluded from the Plan.

(2) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price more than \$3.00 shall be 10%.

(3) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price equal to \$0.75 and up to and including \$3.00 shall be 20%.

(4) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than \$0.75 shall be the lesser of (a) \$0.15 or (b) 75%.

(5) Notwithstanding the foregoing, the Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

(6) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

Appendix A—Schedule 1 (as of January 3, 2017)

| Ticker     | ETP name                                                   | Exchange  |
|------------|------------------------------------------------------------|-----------|
| SPY .....  | SPDR S&P 500 ETF Trust .....                               | NYSE Arca |
| IWM .....  | iShares Russell 2000 ETF .....                             | NYSE Arca |
| QQQ .....  | Powershares QQQ Trust Series 1 .....                       | NASDAQ    |
| EEM .....  | iShares MSCI Emerging Markets ETF .....                    | NYSE Arca |
| GDX .....  | VanEck Vectors Gold Miners ETF .....                       | NYSE Arca |
| XLF .....  | Financial Select Sector SPDR Fund .....                    | NYSE Arca |
| GLD .....  | SPDR Gold Shares .....                                     | NYSE Arca |
| TLT .....  | iShares 20+ Year Treasury Bond ETF .....                   | NASDAQ    |
| VXX .....  | iPATH S&P 500 VIX Short-Term Futures ETN .....             | NYSE Arca |
| EFA .....  | iShares MSCI EAFE ETF .....                                | NYSE Arca |
| XLE .....  | Energy Select Sector SPDR Fund .....                       | NYSE Arca |
| HYG .....  | iShares iBoxx \$ High Yield Corporate Bond ETF .....       | NYSE Arca |
| XIV .....  | VelocityShares Daily Inverse VIX Short Term ETN .....      | NASDAQ    |
| IVV .....  | iShares Core S&P 500 ETF .....                             | NYSE Arca |
| XLU .....  | Utilities Select Sector SPDR Fund .....                    | NYSE Arca |
| GDXJ ..... | VanEck Vectors Junior Gold Miners ETF .....                | NYSE Arca |
| XLP .....  | Consumer Staples Select Sector SPDR Fund .....             | NYSE Arca |
| FXI .....  | iShares China Large-Cap ETF .....                          | NYSE Arca |
| EWZ .....  | iShares MSCI Brazil Capped ETF .....                       | NYSE Arca |
| XLV .....  | Health Care Select Sector SPDR Fund .....                  | NYSE Arca |
| IYR .....  | iShares U.S. Real Estate ETF .....                         | NYSE Arca |
| LQD .....  | iShares iBoxx \$ Investment Grade Corporate Bond ETF ..... | NYSE Arca |
| XLI .....  | Industrial Select Sector SPDR Fund .....                   | NYSE Arca |
| DIA .....  | SPDR Dow Jones Industrial Average ETF Trust .....          | NYSE Arca |
| XOP .....  | SPDR S&P Oil & Gas Exploration & Production ETF .....      | NYSE Arca |
| VWO .....  | Vanguard FTSE Emerging Markets ETF .....                   | NYSE Arca |
| IBB .....  | iShares Nasdaq Biotechnology ETF .....                     | NASDAQ    |
| XLK .....  | Technology Select Sector SPDR Fund .....                   | NYSE Arca |
| XLY .....  | Consumer Discretionary Select Sector SPDR Fund .....       | NYSE Arca |

| Ticker | ETP name                                        | Exchange  |
|--------|-------------------------------------------------|-----------|
| VOO    | Vanguard S&P 500 ETF                            | NYSE Arca |
| USO    | United States Oil Fund LP                       | NYSE Arca |
| JNK    | SPDR Bloomberg Barclays High Yield Bond ETF     | NYSE Arca |
| XBI    | SPDR S&P Biotech ETF                            | NYSE Arca |
| MDY    | SPDR S&P MidCap 400 ETF Trust                   | NYSE Arca |
| VNQ    | Vanguard REIT ETF                               | NYSE Arca |
| EWJ    | iShares MSCI Japan ETF                          | NYSE Arca |
| SVXY   | ProShares Short VIX Short-Term Futures ETF      | NYSE Arca |
| AGG    | iShares Core U.S. Aggregate Bond ETF            | NYSE Arca |
| IEMG   | iShares Core MSCI Emerging Markets ETF          | NYSE Arca |
| KRE    | SPDR S&P Regional Banking ETF                   | NYSE Arca |
| EMB    | iShares JP Morgan USD Emerging Markets Bond ETF | NYSE Arca |
| IWD    | iShares Russell 1000 Value ETF                  | NYSE Arca |
| VEA    | Vanguard FTSE Developed Markets ETF             | NYSE Arca |
| VTI    | Vanguard Total Stock Market ETF                 | NYSE Arca |
| DXJ    | WisdomTree Japan Hedged Equity Fund             | NYSE Arca |
| XLB    | Materials Select Sector SPDR Fund               | NYSE Arca |
| EWG    | iShares MSCI Mexico Capped ETF                  | NYSE Arca |
| IEF    | iShares 7–10 Year Treasury Bond ETF             | NYSE Arca |
| IJH    | iShares Core S&P Mid-Cap ETF                    | NYSE Arca |
| XRT    | SPDR S&P Retail ETF                             | NYSE Arca |
| SLV    | iShares Silver Trust                            | NYSE Arca |
| IWF    | iShares Russell 1000 Growth ETF                 | NYSE Arca |
| VGK    | Vanguard FTSE Europe ETF                        | NYSE Arca |
| SMH    | VanEck Vectors Semiconductor ETF                | NYSE Arca |
| IWN    | iShares Russell 2000 Value ETF                  | NYSE Arca |
| BND    | Vanguard Total Bond Market ETF                  | NYSE Arca |
| RSX    | VanEck Vectors Russia ETF                       | NYSE Arca |
| USMV   | iShares MSCI USA Minimum Volatility ETF         | NYSE Arca |
| TIP    | iShares TIPS Bond ETF                           | NYSE Arca |
| EZU    | iShares MSCI Eurozone ETF                       | Bats      |
| IJR    | iShares Core S&P Small-Cap ETF                  | NYSE Arca |
| SHY    | iShares 1–3 Year Treasury Bond ETF              | NYSE Arca |
| OIH    | VanEck Vectors Oil Service ETF                  | NYSE Arca |
| EWY    | iShares MSCI South Korea Capped ETF             | NYSE Arca |
| PFF    | iShares US Preferred Stock ETF                  | NYSE Arca |
| XME    | SPDR S&P Metals & Mining ETF                    | NYSE Arca |
| IEFA   | iShares Core MSCI EAFE ETF                      | NYSE Arca |
| IWB    | iShares Russell 1000 ETF                        | NYSE Arca |
| KBE    | SPDR S&P Bank ETF                               | NYSE Arca |
| BSV    | Vanguard Short-Term Bond ETF                    | NYSE Arca |
| IWO    | iShares Russell 2000 Growth ETF                 | NYSE Arca |
| HEDJ   | WisdomTree Europe Hedged Equity Fund            | NYSE Arca |
| EWT    | iShares MSCI Taiwan ETF                         | NYSE Arca |
| SH     | ProShares Short S&P 500                         | NYSE Arca |
| ACWI   | iShares MSCI ACWI ETF                           | NASDAQ    |
| VCSH   | Vanguard Short-Term Corporate Bond ETF          | NASDAQ    |
| SPLV   | PowerShares S&P 500 Low Volatility Portfolio    | NYSE Arca |
| EWG    | iShares MSCI Germany ETF                        | NYSE Arca |
| VTV    | Vanguard Value ETF                              | NYSE Arca |
| AMLP   | Alerian MLP ETF                                 | NYSE Arca |
| DBEF   | Deutsche X-trackers MSCI EAFE Hedged Equity ETF | NYSE Arca |
| IAU    | iShares Gold Trust                              | NYSE Arca |
| UNG    | United States Natural Gas Fund LP               | NYSE Arca |
| DVY    | iShares Select Dividend ETF                     | NYSE Arca |
| BKLN   | PowerShares Senior Loan Portfolio               | NYSE Arca |
| VB     | Vanguard Small-Cap ETF                          | NYSE Arca |
| VEU    | Vanguard FTSE All-World ex-US ETF               | NYSE Arca |
| IVE    | iShares S&P 500 Value ETF                       | NYSE Arca |
| RSP    | Guggenheim S&P 500 Equal Weight ETF             | NYSE Arca |
| SHV    | iShares Short Treasury Bond ETF                 | NYSE Arca |
| VIXY   | ProShares VIX Short-Term Futures ETF            | NYSE Arca |
| XHB    | SPDR S&P Homebuilders ETF                       | NYSE Arca |
| IVW    | iShares S&P 500 Growth ETF                      | NYSE Arca |
| VCIT   | Vanguard Intermediate-Term Corporate Bond ETF   | NASDAQ    |
| EPI    | WisdomTree India Earnings Fund                  | NYSE Arca |
| EFAV   | iShares MSCI EAFE Minimum Volatility ETF        | NYSE Arca |
| ITB    | iShares U.S. Home Construction ETF              | NYSE Arca |
| SDY    | SPDR S&P Dividend ETF                           | NYSE Arca |
| MUB    | iShares National Muni Bond ETF                  | NYSE Arca |
| VUG    | Vanguard Growth ETF                             | NYSE Arca |
| VYM    | Vanguard High Dividend Yield ETF                | NYSE Arca |
| INDA   | iShares MSCI India ETF                          | Bats      |
| BIV    | Vanguard Intermediate-Term Bond ETF             | NYSE Arca |

| Ticker | ETP name                                                            | Exchange  |
|--------|---------------------------------------------------------------------|-----------|
| FEZ    | SPDR EURO STOXX 50 ETF                                              | NYSE Arca |
| AAXJ   | iShares MSCI All Country Asia ex Japan ETF                          | NASDAQ    |
| VIG    | Vanguard Dividend Appreciation ETF                                  | NYSE Arca |
| MCHI   | iShares MSCI China ETF                                              | NASDAQ    |
| AMJ    | JPMorgan Alerian MLP Index ETN                                      | NYSE Arca |
| EWJ    | iShares MSCI Hong Kong ETF                                          | NYSE Arca |
| EWU    | iShares MSCI United Kingdom ETF                                     | NYSE Arca |
| SOXX   | iShares PHLX Semiconductor ETF                                      | NASDAQ    |
| FXE    | CurrencyShares Euro Trust                                           | NYSE Arca |
| MBB    | iShares MBS ETF                                                     | NYSE Arca |
| CIU    | iShares Intermediate Credit Bond ETF                                | NYSE Arca |
| VO     | Vanguard Mid-Cap ETF                                                | NYSE Arca |
| EWG    | iShares MSCI Canada ETF                                             | NYSE Arca |
| IEI    | iShares 3–7 Year Treasury Bond ETF                                  | NYSE Arca |
| CSJ    | iShares 1–3 Year Credit Bond ETF                                    | NYSE Arca |
| OEF    | iShares S&P 100 ETF                                                 | NYSE Arca |
| ILF    | iShares Latin America 40 ETF                                        | NYSE Arca |
| IYE    | iShares U.S. Energy ETF                                             | NYSE Arca |
| VGX    | Vanguard Information Technology ETF                                 | NYSE Arca |
| XLRE   | Real Estate Select Sector SPDR Fund                                 | NYSE Arca |
| IYT    | iShares Transportation Average ETF                                  | NYSE Arca |
| PCY    | PowerShares Emerging Markets Sovereign Debt Portfolio               | NYSE Arca |
| IWS    | iShares Russell Mid-Cap Value ETF                                   | NYSE Arca |
| EEMV   | iShares MSCI Emerging Markets Minimum Volatility ETF/Dup            | NYSE Arca |
| IYF    | iShares US Financials ETF                                           | NYSE Arca |
| VBR    | Vanguard Small-Cap Value ETF                                        | NYSE Arca |
| UUP    | PowerShares DB US Dollar Index Bullish Fund                         | NYSE Arca |
| BNDX   | Vanguard Total International Bond ETF                               | NASDAQ    |
| SJNK   | SPDR Bloomberg Barclays Short Term High Yield Bond ETF              | NYSE Arca |
| EWA    | iShares MSCI Australia ETF                                          | NYSE Arca |
| MINT   | PIMCO Enhanced Short Maturity Active Exchange-Traded Fund           | NYSE Arca |
| HDV    | iShares High Dividend ETF                                           | NYSE Arca |
| SCHF   | Schwab International Equity ETF                                     | NYSE Arca |
| BIL    | SPDR Bloomberg Barclays 1–3 Month T-Bill                            | NYSE Arca |
| CWB    | SPDR Bloomberg Barclays Convertible Securities ETF                  | NYSE Arca |
| FDN    | First Trust Dow Jones Internet Index Fund                           | NYSE Arca |
| PGX    | PowerShares Preferred Portfolio                                     | NYSE Arca |
| VFH    | Vanguard Financials ETF                                             | NYSE Arca |
| IWR    | iShares Russell Mid-Cap ETF                                         | NYSE Arca |
| HEFA   | iShares Currency Hedged MSCI EAFE ETF                               | NYSE Arca |
| VT     | Vanguard Total World Stock ETF                                      | NYSE Arca |
| SCZ    | iShares MSCI EAFE Small-Cap ETF                                     | NASDAQ    |
| VXF    | Vanguard Extended Market ETF                                        | NYSE Arca |
| HYS    | PIMCO 0–5 Year High Yield Corporate Bond Index Exchange-Traded Fund | NYSE Arca |
| FLOT   | iShares Floating Rate Bond ETF                                      | NYSE Arca |
| DBC    | PowerShares DB Commodity Index Tracking Fund                        | NYSE Arca |
| ICF    | iShares Cohen & Steers REIT ETF                                     | NYSE Arca |
| ITOT   | iShares Core S&P Total US Stock Market ETF                          | NYSE Arca |
| RWM    | ProShares Short Russell2000                                         | NYSE Arca |
| SCHB   | Schwab US Broad Market ETF                                          | NYSE Arca |
| VHT    | Vanguard Health Care ETF                                            | NYSE Arca |
| RWR    | SPDR Dow Jones REIT ETF                                             | NYSE Arca |
| IWV    | iShares Russell 3000 ETF                                            | NYSE Arca |
| IYW    | iShares US Technology ETF                                           | NYSE Arca |
| VXUS   | Vanguard Total International Stock ETF                              | NASDAQ    |
| EWP    | iShares MSCI Spain Capped ETF                                       | NYSE Arca |
| DBEU   | Deutsche X-trackers MSCI Europe Hedged Equity ETF                   | NYSE Arca |
| EZA    | iShares MSCI South Africa ETF                                       | NYSE Arca |
| DBJP   | Deutsche X-trackers MSCI Japan Hedged Equity ETF                    | NYSE Arca |
| SCHX   | Schwab US Large-Cap ETF                                             | NYSE Arca |
| IJJ    | iShares S&P Mid-Cap 400 Value ETF                                   | NYSE Arca |
| ACWX   | iShares MSCI ACWI ex US ETF                                         | NASDAQ    |
| RWX    | SPDR Dow Jones International Real Estate ETF                        | NYSE Arca |
| IEV    | iShares Europe ETF                                                  | NYSE Arca |
| VBK    | Vanguard Small-Cap Growth ETF                                       | NYSE Arca |
| VOE    | Vanguard Mid-Cap Value ETF                                          | NYSE Arca |
| IWP    | iShares Russell Mid-Cap Growth ETF                                  | NYSE Arca |
| PSQ    | ProShares Short QQQ                                                 | NYSE Arca |
| SCHD   | Schwab US Dividend Equity ETF                                       | NYSE Arca |
| QUAL   | iShares MSCI USA Quality Factor ETF                                 | NYSE Arca |
| SPHD   | PowerShares S&P 500 High Dividend Low Volatility Portfolio          | NYSE Arca |
| FXG    | First Trust Consumer Staples AlphaDEX Fund                          | NYSE Arca |
| BLV    | Vanguard Long-Term Bond ETF                                         | NYSE Arca |
| IJS    | iShares S&P Small-Cap 600 Value ETF                                 | NYSE Arca |

| Ticker | ETP name                                                    | Exchange  |
|--------|-------------------------------------------------------------|-----------|
| VPU    | Vanguard Utilities ETF                                      | NYSE Arca |
| VDE    | Vanguard Energy ETF                                         | NYSE Arca |
| EPP    | iShares MSCI Pacific ex Japan ETF                           | NYSE Arca |
| FXD    | First Trust Consumer Discretionary AlphaDEX Fund            | NYSE Arca |
| IGV    | iShares North American Tech-Software ETF                    | NYSE Arca |
| NEAR   | iShares Short Maturity Bond ETF                             | Bats      |
| HEWJ   | iShares Currency Hedged MSCI Japan ETF                      | NYSE Arca |
| EWI    | iShares MSCI Italy Capped ETF                               | NYSE Arca |
| EIDO   | iShares MSCI Indonesia ETF                                  | NYSE Arca |
| HYD    | VanEck Vectors High Yield Municipal Index ETF               | NYSE Arca |
| SCPB   | SPDR Bloomberg Barclays Short Term Corporate Bond ETF       | NYSE Arca |
| SCHH   | Schwab U.S. REIT ETF                                        | NYSE Arca |
| EWL    | iShares MSCI Switzerland Capped ETF                         | NYSE Arca |
| IJK    | iShares S&P Mid-Cap 400 Growth ETF                          | NYSE Arca |
| EFV    | iShares MSCI EAFE Value ETF                                 | NYSE Arca |
| IJT    | iShares S&P Small-Cap 600 Growth ETF                        | NYSE Arca |
| EMLC   | VanEck Vectors J.P. Morgan EM Local Currency Bond ETF       | NYSE Arca |
| SCHA   | Schwab US Small-Cap ETF                                     | NYSE Arca |
| IDU    | iShares US Utilities ETF                                    | NYSE Arca |
| HEZU   | iShares Currency Hedged MSCI Eurozone ETF                   | NYSE Arca |
| SHM    | SPDR Nuveen Barclays Short Term Municipal Bond ETF          | NYSE Arca |
| IYH    | iShares U.S. Healthcare ETF                                 | NYSE Arca |
| FV     | First Trust Dorsey Wright Focus 5 ETF                       | NASDAQ    |
| IHI    | iShares U.S. Medical Devices ETF                            | NYSE Arca |
| ITA    | iShares US Aerospace & Defense ETF                          | NYSE Arca |
| GOVT   | iShares Core US Treasury Bond ETF                           | NYSE Arca |
| GUNR   | FlexShares Global Upstream Natural Resources Index Fund     | NYSE Arca |
| VV     | Vanguard Large-Cap ETF                                      | NYSE Arca |
| ASHR   | Deutsche X-trackers Harvest CSI 300 China A-Shares ETF      | NYSE Arca |
| IYZ    | iShares US Telecommunications ETF                           | NYSE Arca |
| BWX    | SPDR Bloomberg Barclays International Treasury Bond ETF     | NYSE Arca |
| TFI    | SPDR Nuveen Barclays Municipal Bond ETF                     | NYSE Arca |
| SCHZ   | Schwab U.S. Aggregate Bond ETF                              | NYSE Arca |
| VCLT   | Vanguard Long-Term Corporate Bond ETF                       | NASDAQ    |
| VNQI   | Vanguard Global ex-U.S. Real Estate ETF                     | NASDAQ    |
| KBWB   | PowerShares KBW Bank Portfolio                              | NASDAQ    |
| IDV    | iShares International Select Dividend ETF                   | NYSE Arca |
| IXUS   | iShares Core MSCI Total International Stock ETF             | NASDAQ    |
| ACVV   | iShares MSCI All Country World Minimum Volatility ETF       | NYSE Arca |
| FXV    | CurrencyShares Japanese Yen Trust                           | NYSE Arca |
| NOBL   | ProShares S&P 500 Dividend Aristocrats ETF                  | Bats      |
| VPL    | Vanguard FTSE Pacific ETF                                   | NYSE Arca |
| THD    | iShares MSCI Thailand Capped ETF                            | NYSE Arca |
| TOTL   | SPDR Doubleline Total Return Tactical ETF                   | NYSE Arca |
| VDC    | Vanguard Consumer Staples ETF                               | NYSE Arca |
| VOX    | Vanguard Telecommunication Services ETF                     | NYSE Arca |
| VTIP   | Vanguard Short-Term Inflation-Protected Securities ETF      | NASDAQ    |
| MTUM   | iShares MSCI USA Momentum Factor ETF                        | NYSE Arca |
| QTEC   | First Trust NASDAQ-100 Technology Index Fund                | NASDAQ    |
| EWM    | iShares MSCI Malaysia ETF                                   | NYSE Arca |
| FXN    | First Trust Energy AlphaDEX Fund                            | NYSE Arca |
| OIL    | iPath Goldman Sachs Crude Oil Total Return Index ETN        | NYSE Arca |
| REM    | iShares Mortgage Real Estate Capped ETF                     | NYSE Arca |
| TBF    | ProShares Short 20+ Year Treasury                           | NYSE Arca |
| FCG    | First Trust Natural Gas ETF                                 | NYSE Arca |
| FXR    | First Trust Industrials/Producer Durables AlphaDEX Fund     | NYSE Arca |
| PIN    | PowerShares India Portfolio                                 | NYSE Arca |
| VIS    | Vanguard Industrials ETF                                    | NYSE Arca |
| TUR    | iShares MSCI Turkey ETF                                     | NYSE Arca |
| VMBS   | Vanguard Mortgage-Backed Securities ETF                     | NASDAQ    |
| FVD    | First Trust Value Line Dividend Index Fund                  | NYSE Arca |
| FXB    | CurrencyShares British Pound Sterling Trust                 | NYSE Arca |
| PHB    | PowerShares Fundamental High Yield Corporate Bond Portfolio | NYSE Arca |
| DOG    | ProShares Short Dow30                                       | NYSE Arca |
| EFG    | iShares MSCI EAFE Growth ETF                                | NYSE Arca |
| EWQ    | iShares MSCI France ETF                                     | NYSE Arca |
| IYJ    | iShares U.S. Industrials ETF                                | NYSE Arca |
| IYG    | iShares U.S. Financial Services ETF                         | NYSE Arca |
| BOND   | PIMCO Total Return Active Exchange-Traded Fund              | NYSE Arca |
| HEWG   | iShares Currency Hedged MSCI Germany ETF                    | NYSE Arca |
| SHYG   | iShares 0-5 Year High Yield Corporate Bond ETF              | NYSE Arca |
| VLUE   | iShares MSCI USA Value Factor ETF                           | NYSE Arca |
| SCHE   | Schwab Emerging Markets Equity ETF                          | NYSE Arca |
| ECH    | iShares MSCI Chile Capped ETF                               | NYSE Arca |

| Ticker     | ETP name                                                                      | Exchange  |
|------------|-------------------------------------------------------------------------------|-----------|
| FXU .....  | First Trust Utilities AlphaDEX Fund .....                                     | NYSE Arca |
| RWO .....  | SPDR Dow Jones Global Real Estate ETF .....                                   | NYSE Arca |
| PRF .....  | Powershares FTSE RAFI US 1000 Portfolio .....                                 | NYSE Arca |
| VGLT ..... | Vanguard Long-Term Government Bond ETF .....                                  | NASDAQ    |
| VOT .....  | Vanguard Mid-Cap Growth ETF .....                                             | NYSE Arca |
| SCHM ..... | Schwab U.S. Mid-Cap ETF .....                                                 | NYSE Arca |
| EUFN ..... | iShares MSCI Europe Financials ETF .....                                      | NASDAQ    |
| EWS .....  | iShares MSCI Singapore ETF .....                                              | NYSE Arca |
| GVI .....  | iShares Intermediate Government/Credit Bond ETF .....                         | NYSE Arca |
| SCHV ..... | Schwab U.S. Large-Cap Value ETF .....                                         | NYSE Arca |
| SCHP ..... | Schwab US TIPs ETF .....                                                      | NYSE Arca |
| DEM .....  | WisdomTree Emerging Markets High Dividend Fund .....                          | NYSE Arca |
| IYM .....  | iShares U.S. Basic Materials ETF .....                                        | NYSE Arca |
| DBA .....  | PowerShares DB Agriculture Fund .....                                         | NYSE Arca |
| SCHG ..... | Schwab U.S. Large-Cap Growth ETF .....                                        | NYSE Arca |
| IGOV ..... | iShares International Treasury Bond ETF .....                                 | NASDAQ    |
| IGF .....  | iShares Global Infrastructure ETF .....                                       | NASDAQ    |
| TLH .....  | iShares 10–20 Year Treasury Bond ETF .....                                    | NYSE Arca |
| EPHE ..... | iShares MSCI Philippines ETF .....                                            | NYSE Arca |
| SCHO ..... | Schwab Short-Term U.S. Treasury ETF .....                                     | NYSE Arca |
| EUM .....  | ProShares Short MSCI Emerging Markets .....                                   | NYSE Arca |
| PGF .....  | PowerShares Financial Preferred Portfolio .....                               | NYSE Arca |
| IHF .....  | iShares U.S. Healthcare Providers ETF .....                                   | NYSE Arca |
| VSS .....  | Vanguard FTSE All World ex-US Small-Cap ETF .....                             | NYSE Arca |
| KIE .....  | SPDR S&P Insurance ETF .....                                                  | NYSE Arca |
| SPHB ..... | PowerShares S&P 500 High Beta Port ETF .....                                  | NYSE Arca |
| SDOG ..... | ALPS Sector Dividend Dogs ETF .....                                           | NYSE Arca |
| VAW .....  | Vanguard Materials ETF .....                                                  | NYSE Arca |
| FPE .....  | First Trust Preferred Securities and Income ETF .....                         | NYSE Arca |
| ITR .....  | SPDR Bloomberg Barclays Intermediate Term Corporate Bond ETF .....            | NYSE Arca |
| VCR .....  | Vanguard Consumer Discretionary ETF .....                                     | NYSE Arca |
| IGE .....  | iShares North American Natural Resources ETF .....                            | NYSE Arca |
| SIL .....  | Global X Silver Miners ETF .....                                              | NYSE Arca |
| EDV .....  | Vanguard Extended Duration Treasury ETF .....                                 | NYSE Arca |
| DLN .....  | WisdomTree LargeCap Dividend Fund .....                                       | NYSE Arca |
| DON .....  | WisdomTree MidCap Dividend Fund .....                                         | NYSE Arca |
| MLPI ..... | ETRACS Alerian MLP Infrastructure Index ETN .....                             | NYSE Arca |
| CLY .....  | iShares 10+ Year Credit Bond ETF .....                                        | NYSE Arca |
| IUSG ..... | iShares Core US Growth ETF .....                                              | NYSE Arca |
| ITM .....  | VanEck Vectors AMT-Free Intermediate Municipal Index ETF .....                | NYSE Arca |
| RPG .....  | Guggenheim S&P 500 Pure Growth ETF .....                                      | NYSE Arca |
| VGIT ..... | Vanguard Intermediate-Term Government Bond ETF .....                          | NASDAQ    |
| CRED ..... | iShares Core US Credit Bond ETF .....                                         | NYSE Arca |
| XES .....  | SPDR S&P Oil & Gas Equipment & Services ETF .....                             | NYSE Arca |
| PHYS ..... | Sprott Physical Gold Trust .....                                              | NYSE Arca |
| TLO .....  | SPDR Bloomberg Barclays Long Term Treasury ETF .....                          | NYSE Arca |
| BBH .....  | VanEck Vectors Biotech ETF .....                                              | NASDAQ    |
| RYT .....  | Guggenheim S&P 500 Equal Weight Technology ETF .....                          | NYSE Arca |
| FXO .....  | First Trust Financial AlphaDEX Fund .....                                     | NYSE Arca |
| CWI .....  | SPDR MSCI ACWI ex-US ETF .....                                                | NYSE Arca |
| FXH .....  | First Trust Health Care AlphaDEX Fund .....                                   | NYSE Arca |
| FDL .....  | First Trust Morningstar Dividend Leaders Index .....                          | NYSE Arca |
| PJP .....  | Powershares Dynamic Pharmaceuticals Portfolio .....                           | NYSE Arca |
| PZA .....  | PowerShares National AMT-Free Municipal Bond Portfolio .....                  | NYSE Arca |
| RPV .....  | Guggenheim S&P 500 Pure Value ETF .....                                       | NYSE Arca |
| GSLC ..... | Goldman Sachs ActiveBeta U.S. Large Cap Equity ETF .....                      | NYSE Arca |
| SUB .....  | iShares Short-Term National Muni Bond ETF .....                               | NYSE Arca |
| IXC .....  | iShares Global Energy ETF .....                                               | NYSE Arca |
| IAT .....  | iShares US Regional Banks ETF .....                                           | NYSE Arca |
| GSY .....  | Guggenheim Enhanced Short Duration ETF .....                                  | NYSE Arca |
| ERUS ..... | iShares MSCI Russia Capped ETF .....                                          | NYSE Arca |
| IXJ .....  | iShares Global Healthcare ETF .....                                           | NYSE Arca |
| DES .....  | WisdomTree SmallCap Dividend Fund .....                                       | NYSE Arca |
| DJP .....  | iPath Bloomberg Commodity Index Total Return ETN .....                        | NYSE Arca |
| FTSM ..... | First Trust Enhanced Short Maturity ETF .....                                 | NASDAQ    |
| XPH .....  | SPDR S&P Pharmaceuticals ETF .....                                            | NYSE Arca |
| VTEB ..... | Vanguard Tax-Exempt Bond Index ETF .....                                      | NYSE Arca |
| VWOB ..... | Vanguard Emerging Markets Government Bond ETF .....                           | NASDAQ    |
| IUSV ..... | iShares Core US Value ETF .....                                               | NYSE Arca |
| PDP .....  | PowerShares DWA Momentum Portfolio .....                                      | NASDAQ    |
| MGK .....  | Vanguard Mega Cap Growth ETF .....                                            | NYSE Arca |
| HYLS ..... | First Trust Exchange-Traded Fund IV First Trust Tactical High Yield ETF ..... | NASDAQ    |
| FEX .....  | First Trust Large Cap Core AlphaDEX Fund .....                                | NASDAQ    |
| HYMB ..... | SPDR Nuveen S&P High Yield Municipal Bond ETF .....                           | NYSE Arca |

| Ticker | ETP name                                                              | Exchange  |
|--------|-----------------------------------------------------------------------|-----------|
| DGRO   | iShares Core Dividend Growth ETF                                      | NYSE Arca |
| VGSH   | Vanguard Short-Term Government Bond ETF                               | NASDAQ    |
| RHS    | Guggenheim S&P 500 Equal Weight Consumer Staples ETF                  | NYSE Arca |
| LEMB   | iShares Emerging Markets Local Currency Bond ETF                      | NYSE Arca |
| FBT    | First Trust NYSE Arca Biotechnology Index Fund                        | NYSE Arca |
| IYK    | iShares US Consumer Goods ETF                                         | NYSE Arca |
| FNDX   | Schwab Fundamental U.S. Large Company Index                           | NYSE Arca |
| BNDS   | SPDR Bloomberg Barclays Aggregate Bond ETF                            | NYSE Arca |
| PEY    | PowerShares High Yield Equity Dividend Achievers Portfolio            | NASDAQ    |
| VRP    | PowerShares Variable Rate Preferred Portfolio                         | NYSE Arca |
| SPHQ   | PowerShares S&P 500 Quality Portfolio                                 | NYSE Arca |
| GNR    | SPDR S&P Global Natural Resources ETF                                 | NYSE Arca |
| ANGL   | VanEck Vectors Fallen Angel High Yield Bond ETF                       | NYSE Arca |
| EMLP   | First Trust North American Energy Infrastructure Fund                 | NYSE Arca |
| VTWO   | Vanguard Russell 2000                                                 | NASDAQ    |
| SRLN   | SPDR Blackstone/GSO Senior Loan ETF                                   | NYSE Arca |
| EWD    | iShares MSCI Sweden ETF                                               | NYSE Arca |
| RING   | iShares MSCI Global Gold Miners ETF                                   | NYSE Arca |
| BAB    | PowerShares Build America Bond Portfolio                              | NYSE Arca |
| XMLV   | PowerShares S&P MidCap Low Volatility Portfolio                       | NYSE Arca |
| KWEB   | KraneShares CSI China Internet ETF                                    | NASDAQ    |
| IEO    | iShares U.S. Oil & Gas Exploration & Production ETF                   | NYSE Arca |
| XSLV   | PowerShares S&P SmallCap Low Volatility Portfolio                     | NYSE Arca |
| IEUR   | iShares Core MSCI Europe ETF                                          | NYSE Arca |
| IFGL   | iShares International Developed Real Estate ETF                       | NASDAQ    |
| ZROZ   | PIMCO 25+ Year Zero Coupon U.S. Treasury Index Exchange-Traded Fund   | NYSE Arca |
| XSD    | SPDR S&P Semiconductor ETF                                            | NYSE Arca |
| DFE    | WisdomTree Europe SmallCap Dividend Fund                              | NYSE Arca |
| FTSL   | First Trust Senior Loan ETF                                           | NASDAQ    |
| FXZ    | First Trust Materials AlphaDEX Fund                                   | NYSE Arca |
| BLHY   | Virtus Newfleet Dynamic Credit ETF                                    | NYSE Arca |
| SCHR   | Schwab Intermediate-Term U.S. Treasury ETF                            | NYSE Arca |
| EPOL   | iShares MSCI Poland Capped ETF                                        | NYSE Arca |
| CMF    | iShares California Muni Bond ETF                                      | NYSE Arca |
| GXC    | SPDR S&P China ETF                                                    | NYSE Arca |
| XAR    | SPDR S&P Aerospace & Defense ETF                                      | NYSE Arca |
| IYC    | iShares U.S. Consumer Services ETF                                    | NYSE Arca |
| FNDF   | Schwab Fundamental International Large Company Index                  | NYSE Arca |
| DWX    | SPDR S&P International Dividend ETF                                   | NYSE Arca |
| SGOL   | ETFS Physical Swiss Gold Shares                                       | NYSE Arca |
| EWN    | iShares MSCI Netherlands ETF                                          | NYSE Arca |
| PKW    | PowerShares Buyback Achievers Portfolio                               | NASDAQ    |
| PSLV   | Sprott Physical Silver Trust                                          | NYSE Arca |
| IGM    | iShares North American Tech ETF                                       | NYSE Arca |
| FNCL   | Fidelity MSCI Financials Index ETF                                    | NYSE Arca |
| PPLT   | ETFS Physical Platinum Shares                                         | NYSE Arca |
| ISTB   | iShares Core 1–5 Year USD Bond ETF                                    | NYSE Arca |
| DGRW   | WisdomTree U.S. Quality Dividend Growth Fund                          | NASDAQ    |
| IHE    | iShares US Pharmaceuticals ETF                                        | NYSE Arca |
| SLYV   | SPDR S&P 600 Small CapValue ETF                                       | NYSE Arca |
| HACK   | PureFunds ISE Cyber Security ETF                                      | NYSE Arca |
| FNDA   | Schwab Fundamental U.S. Small Company Index                           | NYSE Arca |
| CORP   | PIMCO Investment Grade Corporate Bond Index Exchange-Traded Fund      | NYSE Arca |
| BSJI   | Guggenheim BulletShares 2018 High Yield Corporate Bond ETF            | NYSE Arca |
| ECON   | Columbia Emerging Markets Consumer ETF                                | NYSE Arca |
| PSK    | SPDR Wells Fargo Preferred Stock ETF                                  | NYSE Arca |
| GSG    | iShares S&P GSCI Commodity Indexed Trust                              | NYSE Arca |
| VOOG   | Vanguard S&P 500 Growth ETF                                           | NYSE Arca |
| VXZ    | iPATH S&P 500 VIX Mid-Term Futures ETN                                | NYSE Arca |
| ONEQ   | Fidelity NASDAQ Composite Index Tracking Stock ETF                    | NASDAQ    |
| SLYG   | SPDR S&P 600 Small Cap Growth ETF                                     | NYSE Arca |
| STIP   | iShares 0–5 Year TIPS Bond ETF                                        | NYSE Arca |
| PDBC   | PowerShares DB Optimum Yield Diversified Commodity Strategy Portfolio | NASDAQ    |
| FXL    | First Trust Technology AlphaDEX Fund                                  | NYSE Arca |
| IXN    | iShares Global Tech ETF                                               | NYSE Arca |
| MOO    | VanEck Vectors Agribusiness ETF                                       | NYSE Arca |
| EPU    | iShares MSCI All Peru Capped ETF                                      | NYSE Arca |
| SNLN   | Highland/iBoxx Senior Loan ETF                                        | NASDAQ    |
| DHS    | WisdomTree High Dividend Fund                                         | NYSE Arca |
| AOR    | iShares Core Growth Allocation ETF                                    | NYSE Arca |
| QAI    | IndexIQ ETF Trust—IQ Hedge Multi-Strategy Tracker ETF                 | NYSE Arca |
| PPH    | VanEck Vectors Pharmaceutical ETF                                     | NASDAQ    |
| FTEC   | Fidelity MSCI Information Technology Index ETF                        | NYSE Arca |
| DGS    | WisdomTree Emerging Markets SmallCap Dividend Fund                    | NYSE Arca |

| Ticker | ETP name                                                         | Exchange  |
|--------|------------------------------------------------------------------|-----------|
| FHLC   | Fidelity MSCI Health Care Index ETF                              | NYSE Arca |
| FNDE   | Schwab Fundamental Emerging Markets Large Company Index ETF      | NYSE Arca |
| LMBS   | First Trust Low Duration Opportunities ETF                       | NASDAQ    |
| IPAC   | iShares Core MSCI Pacific ETF                                    | NYSE Arca |
| MGV    | Vanguard Mega Cap Value ETF                                      | NYSE Arca |
| FRI    | First Trust S&P REIT Index Fund                                  | NYSE Arca |
| JO     | iPath Bloomberg Coffee Subindex Total Return ETN                 | NYSE Arca |
| PXH    | PowerShares FTSE RAFI Emerging Markets Portfolio                 | NYSE Arca |
| WIP    | SPDR Citi International Government Inflation-Protected Bond ETF  | NYSE Arca |
| AOM    | iShares Core Moderate Allocation ETF                             | NYSE Arca |
| EWK    | iShares MSCI Belgium Capped ETF                                  | NYSE Arca |
| VIIX   | VelocityShares VIX Short Term ETN                                | NASDAQ    |
| SCJ    | iShares MSCI Japan Small-Cap ETF                                 | NYSE Arca |
| DVYE   | iShares Emerging Markets Dividend ETF                            | NYSE Arca |
| PXF    | PowerShares FTSE RAFI Developed Markets ex-U.S. Portfolio        | NYSE Arca |
| DBB    | PowerShares DB Base Metals Fund                                  | NYSE Arca |
| HYEM   | VanEck Vectors Emerging High Yield Bond ETF                      | NYSE Arca |
| PPA    | PowerShares Aerospace & Defense Portfolio                        | NYSE Arca |
| FTGC   | First Trust Global Tactical Commodity Strategy Fund              | NASDAQ    |
| DLS    | WisdomTree International SmallCap Dividend Fund                  | NYSE Arca |
| JHMD   | John Hancock Multifactor Developed International ETF             | NYSE Arca |
| SDIV   | Global X SuperDividend ETF                                       | NYSE Arca |
| PICK   | iShares MSCI Global Metals & Mining Producers ETF                | NYSE Arca |
| INDY   | iShares India 50 ETF                                             | NASDAQ    |
| SPYG   | SPDR S&P 500 Growth ETF                                          | NYSE Arca |
| STPZ   | PIMCO 1-5 Year U.S. TIPS Index Exchange-Traded Fund              | NYSE Arca |
| SCHC   | Schwab International Small-Cap Equity ETF                        | NYSE Arca |
| IXG    | iShares Global Financials ETF                                    | NYSE Arca |
| IAGG   | iShares International Aggregate Bond Fund                        | Bats      |
| IWC    | iShares Micro-Cap ETF                                            | NYSE Arca |
| DBO    | PowerShares DB Oil Fund                                          | NYSE Arca |
| FXC    | CurrencyShares Canadian Dollar Trust                             | NYSE Arca |
| USCI   | United States Commodity Index Fund                               | NYSE Arca |
| PSCT   | PowerShares S&P SmallCap Information Technology Portfolio        | NASDAQ    |
| ITE    | SPDR Bloomberg Barclays Intermediate Term Treasury ETF           | NYSE Arca |
| DBP    | PowerShares DB Precious Metals Fund                              | NYSE Arca |
| FENY   | Fidelity MSCI Energy Index ETF                                   | NYSE Arca |
| ELD    | WisdomTree Emerging Markets Local Debt Fund                      | NYSE Arca |
| REZ    | iShares Residential Real Estate Capped ETF                       | NYSE Arca |
| EWX    | SPDR S&P Emerging Markets SmallCap ETF                           | NYSE Arca |
| ENZL   | iShares MSCI New Zealand Capped ETF                              | NASDAQ    |
| IDLV   | PowerShares S&P International Developed Low Volatility Portfolio | NYSE Arca |
| BSJJ   | Guggenheim BulletShares 2019 High Yield Corporate Bond ETF       | NYSE Arca |
| SILJ   | PureFunds ISE Junior Silver Small Cap Miners/Explorers ETF       | NYSE Arca |
| VONG   | Vanguard Russell 1000 Growth ETF                                 | NASDAQ    |
| JPIN   | JPMorgan Diversified Return International Equity ETF             | NYSE Arca |
| WBIY   | WBI Power FactorTM High Dividend ETF                             | NYSE Arca |
| FTA    | First Trust Large Cap Value AlphaDEX Fund                        | NASDAQ    |
| GWX    | SPDR S&P International Small Cap ETF                             | NYSE Arca |
| OUSA   | O'Shares FTSE US Quality Dividend ETF                            | NYSE Arca |
| FM     | iShares MSCI Frontier 100 ETF                                    | NYSE Arca |
| SJB    | ProShares Short High Yield                                       | NYSE Arca |
| RYH    | Guggenheim S&P 500 Equal Weight Healthcare ETF                   | NYSE Arca |
| VONV   | Vanguard Russell 1000 Value                                      | NASDAQ    |
| PFXF   | VanEck Vectors Preferred Securities ex Financials ETF            | NYSE Arca |
| QDF    | FlexShares Quality Dividend Index Fund                           | NYSE Arca |
| RYF    | Guggenheim S&P 500 Equal Weight Financials ETF                   | NYSE Arca |
| RYE    | Guggenheim S&P 500 Equal Weight Energy ETF                       | NYSE Arca |
| PID    | PowerShares International Dividend Achievers Portfolio           | NASDAQ    |
| FUTY   | Fidelity MSCI Utilities Index ETF                                | NYSE Arca |
| HDGE   | AdvisorShares Ranger Equity Bear ETF                             | NYSE Arca |
| MOAT   | VanEck Vectors Morningstar Wide Moat ETF                         | NYSE Arca |
| PWV    | PowerShares Dynamic Large Cap Value Portfolio                    | NYSE Arca |
| BSCL   | Guggenheim BulletShares 2018 Corporate Bond ETF                  | NYSE Arca |
| DFJ    | WisdomTree Japan SmallCap Dividend Fund                          | NYSE Arca |
| TDIT   | FlexShares iBoxx 3-Year Target Duration TIPS Index Fund          | NYSE Arca |
| DGL    | PowerShares DB Gold Fund                                         | NYSE Arca |
| DBE    | PowerShares DB Energy Fund                                       | NYSE Arca |
| SMDV   | Proshares Trust-Proshares Russell 2000 Dividend Growers ETF      | Bats      |
| IFV    | First Trust Dorsey Wright International Focus 5 ETF              | NASDAQ    |
| MDIV   | First Trust Multi-Asset Diversified Income Index Fund            | NASDAQ    |
| PRFZ   | PowerShares FTSE RAFI US 1500 Small-Mid Portfolio                | NASDAQ    |
| FLRN   | SPDR Bloomberg Barclays Investment Grade Floating Rate ETF       | NYSE Arca |
| EFZ    | ProShares Short MSCI EAFE                                        | NYSE Arca |

| Ticker | ETP name                                                     | Exchange  |
|--------|--------------------------------------------------------------|-----------|
| BSCH   | Guggenheim BulletShares 2017 Corporate Bond ETF              | NYSE Arca |
| IGN    | iShares North American Tech-Multimedia Networking ETF        | NYSE Arca |
| FYX    | First Trust Small Cap Core AlphaDEX Fund                     | NASDAQ    |
| IYY    | iShares Dow Jones U.S. ETF                                   | NYSE Arca |
| VNM    | VanEck Vectors Vietnam ETF                                   | NYSE Arca |
| DWM    | WisdomTree International Equity Fund                         | NYSE Arca |
| BSCK   | Guggenheim BulletShares 2020 Corporate Bond ETF              | NYSE Arca |
| EBND   | SPDR Bloomberg Barclays Emerging Markets Local Bond ETF      | NYSE Arca |
| DSI    | iShares MSCI KLD 400 Social ETF                              | NYSE Arca |
| FREL   | Fidelity MSCI Real Estate Index ETF                          | NYSE Arca |
| IOO    | iShares Global 100 ETF                                       | NYSE Arca |
| KBWY   | PowerShares KBW Premium Yield Equity REIT Portfolio          | NASDAQ    |
| IHDG   | WisdomTree International Hedged Quality Dividend Growth Fund | NYSE Arca |
| FTC    | First Trust Large Cap Growth AlphaDEX Fund                   | NASDAQ    |
| IPE    | SPDR Bloomberg Barclays TIPS ETF                             | NYSE Arca |
| GWL    | SPDR S&P World ex-US ETF                                     | NYSE Arca |
| SKYY   | First Trust ISE Cloud Computing Index Fund                   | NASDAQ    |
| XTN    | SPDR S&P Transportation ETF                                  | NYSE Arca |
| SLX    | VanEck Vectors Steel Index Fund                              | NYSE Arca |
| REGL   | Proshares S&P Midcap 400 Dividend Aristocrats ETF            | Bats      |
| FNX    | First Trust Mid Cap Core AlphaDEX Fund                       | NASDAQ    |
| SGDM   | Sprott Gold Miners ETF                                       | NYSE Arca |
| CMBS   | iShares CMBS ETF                                             | NYSE Arca |
| PKB    | PowerShares Dynamic Building & Construction Portfolio        | NYSE Arca |
| QABA   | First Trust NASDAQ ABA Community Bank Index Fund             | NASDAQ    |
| MXI    | iShares Global Materials ETF                                 | NYSE Arca |
| TDIV   | First Trust NASDAQ Technology Dividend Index Fund            | NASDAQ    |
| FDIS   | Fidelity MSCI Consumer Discretionary Index ETF               | NYSE Arca |
| AOA    | iShares Core Aggressive Allocation ETF                       | NYSE Arca |
| FPX    | First Trust US IPO Index Fund                                | NYSE Arca |
| FNDC   | Schwab Fundamental International Small Cap Company index     | NYSE Arca |
| BSCJ   | Guggenheim BulletShares 2019 Corporate Bond ETF              | NYSE Arca |
| AIA    | iShares Asia 50 ETF                                          | NASDAQ    |
| GLTR   | ETFS Physical Precious Metal Basket Shares                   | NYSE Arca |
| VONE   | Vanguard Russell 1000                                        | NASDAQ    |
| FSTA   | Fidelity MSCI Consumer Staples Index ETF                     | NYSE Arca |
| BSCL   | Guggenheim BulletShares 2021 Corporate Bond ETF              | NYSE Arca |
| FDT    | First Trust Developed Markets ex-US AlphaDEX Fund            | NASDAQ    |
| COMT   | iShares Commodities Select Strategy ETF                      | NASDAQ    |
| PUI    | PowerShares DWA Utilities Momentum Portfolio                 | NASDAQ    |
| PSL    | PowerShares DWA Consumer Staples Momentum Portfolio          | NASDAQ    |
| MGC    | Vanguard Mega Cap ETF                                        | NYSE Arca |
| JKG    | iShares Morningstar Mid-Cap ETF                              | NYSE Arca |
| BSJH   | Guggenheim BulletShares 2017 High Yield Corporate Bond ETF   | NYSE Arca |
| MDYG   | SPDR S&P 400 Mid CapGrowth ETF                               | NYSE Arca |
| URTH   | iShares MSCI World ETF                                       | NYSE Arca |
| RDIV   | Oppenheimer Ultra Dividend Revenue ETF                       | NYSE Arca |
| SLY    | SPDR S&P 600 Small CapETF                                    | NYSE Arca |
| SGG    | iPath Bloomberg Sugar Subindex Total Return ETN              | NYSE Arca |
| BSJK   | Guggenheim BulletShares 2020 High Yield Corporate Bond ETF   | NYSE Arca |
| AOK    | iShares Core Conservative Allocation ETF                     | NYSE Arca |
| VIOO   | Vanguard S&P Small-Cap 600 ETF                               | NYSE Arca |
| BSJG   | Guggenheim BulletShares 2016 High Yield Corporate Bond ETF   | NYSE Arca |
| PCEF   | PowerShares CEF Income Composite Portfolio                   | NYSE Arca |
| RWL    | Oppenheimer Large Cap Revenue ETF                            | NYSE Arca |
| PWZ    | PowerShares California AMT-Free Municipal Bond Portfolio     | NYSE Arca |
| JHML   | John Hancock Multi-Factor Large Cap ETF                      | NYSE Arca |
| FLTB   | Fidelity Ltd Term Bond ETF                                   | NYSE Arca |
| MDYV   | SPDR S&P 400 Mid Cap Value ETF                               | NYSE Arca |
| RYU    | Guggenheim S&P 500 Equal Weight Utilities ETF                | NYSE Arca |
| RGI    | Guggenheim S&P 500 Equal Weight Industrials ETF              | NYSE Arca |
| PALL   | ETFS Physical Palladium Shares                               | NYSE Arca |
| XHS    | SPDR S&P Health Care Services ETF                            | NYSE Arca |
| FBND   | Fidelity Total Bond ETF                                      | NYSE Arca |
| DVYA   | iShares Asia/Pacific Dividend ETF                            | NYSE Arca |
| CORN   | Teucrium Corn Fund                                           | NYSE Arca |
| IVOO   | Vanguard S&P Mid-Cap 400 ETF                                 | NYSE Arca |
| FIDU   | Fidelity MSCI Industrials Index ETF                          | NYSE Arca |
| JKE    | iShares Morningstar Large-Cap Growth ETF                     | NYSE Arca |
| EMHY   | iShares Emerging Markets High Yield Bond ETF                 | Bats      |
| IQDF   | FlexShares International Quality Dividend Index Fund         | NYSE Arca |
| VOOV   | Vanguard S&P 500 Value ETF                                   | NYSE Arca |
| HEWU   | iShares Currency Hedged MSCI United Kingdom ETF              | NYSE Arca |
| FVC    | First Trust Dorsey Wright Dynamic Focus 5 ETF                | NASDAQ    |

| Ticker | ETP name                                                              | Exchange  |
|--------|-----------------------------------------------------------------------|-----------|
| SIVR   | ETFS Physical Silver Shares                                           | NYSE Arca |
| KOL    | VanEck Vectors Coal ETF                                               | NYSE Arca |
| MLPA   | Global X MLP ETF                                                      | NYSE Arca |
| AGZ    | iShares Agency Bond ETF                                               | NYSE Arca |
| EELV   | PowerShares S&P Emerging Markets Low Volatility Portfolio             | NYSE Arca |
| TAN    | Guggenheim Solar ETF                                                  | NYSE Arca |
| IUSB   | iShares Core Total USD Bond Market ETF                                | NYSE Arca |
| IVOV   | Vanguard S&P Mid-Cap 400 Value ETF                                    | NYSE Arca |
| GBF    | iShares Government/Credit Bond ETF                                    | NYSE Arca |
| TLTD   | FlexShares Morningstar Developed Markets ex-US Factor Tilt Index Fund | NYSE Arca |
| SLQD   | iShares 0–5 Year Investment Grade Corporate Bond ETF                  | NASDAQ    |
| CSM    | ProShares Large Cap Core Plus                                         | Bats      |
| TDTF   | FlexShares iBoxx 5-Year Target Duration TIPS Index Fund               | NYSE Arca |
| SOCL   | Global X Social Media Index ETF                                       | NASDAQ    |
| SLVP   | iShares MSCI Global Silver Miners ETF                                 | NYSE Arca |
| QQEW   | First Trust NASDAQ–100 Equal Weighted Index Fund                      | NASDAQ    |
| FJP    | First Trust Japan AlphaDEX Fund                                       | NASDAQ    |
| FEP    | First Trust Europe AlphaDEX Fund                                      | NASDAQ    |
| BNO    | United States Brent Oil Fund LP                                       | NYSE Arca |
| AMZA   | InfraCap MLP ETF                                                      | NYSE Arca |
| MBG    | SPDR Bloomberg Barclays Mortgage Backed Bond ETF                      | NYSE Arca |
| IWY    | iShares Russell Top 200 Growth ETF                                    | NYSE Arca |
| FLQE   | Franklin LibertyQ Emerging Markets ETF                                | NYSE Arca |
| GMM    | SPDR S&P Emerging Markets ETF                                         | NYSE Arca |
| BSCM   | Guggenheim BulletShares 2022 Corporate Bond ETF                       | NYSE Arca |
| GREK   | Global X MSCI Greece ETF                                              | NYSE Arca |
| FMAT   | Fidelity MSCI Materials Index ETF                                     | NYSE Arca |
| HEEM   | iShares Currency Hedged MSCI Emerging Markets ETF                     | NYSE Arca |
| GEM    | Goldman Sachs ActiveBeta Emerging Markets Equity ETF                  | NYSE Arca |
| DBKO   | Deutsche X-trackers MSCI South Korea Hedged Equity ETF                | NYSE Arca |
| ILTB   | iShares Core 10+ Year USD Bond ETF                                    | NYSE Arca |
| GSIE   | Goldman Sachs ActiveBeta International Equity ETF                     | NYSE Arca |
| LRGF   | iShares FactorSelect MSCI USA ETF                                     | NYSE Arca |
| NFRA   | FlexShares STOXX Global Broad Infrastructure Index Fund               | NYSE Arca |
| AGGP   | IQ Enhanced Core Plus Bond U.S. ETF                                   | NYSE Arca |
| KXI    | iShares Global Consumer Staples ETF                                   | NYSE Arca |
| EDIV   | SPDR S&P Emerging Markets Dividend ETF                                | NYSE Arca |
| IEZ    | iShares U.S. Oil Equipment & Services ETF                             | NYSE Arca |
| ZIV    | VelocityShares Daily Inverse VIX Medium Term ETN                      | NASDAQ    |
| DTD    | WisdomTree Total Dividend Fund                                        | NYSE Arca |
| JJG    | iPath Bloomberg Grains Subindex Total Return ETN                      | NYSE Arca |

## Appendix B—Data

Unless otherwise specified, the following data shall be collected and transmitted to the SEC in an agreed-upon format on a monthly basis, to be provided 30 calendar days following month end. Unless otherwise specified, the Primary Listing Exchanges shall be responsible for collecting and transmitting the data to the SEC. Data collected in connection with Sections II(E)–(G) below shall be transmitted to the SEC with a request for confidential treatment under the Freedom of Information Act. 5 U.S.C. 552, and the SEC's rules and regulations thereunder.

### I. Summary Statistics

A. Frequency with which NMS Stocks enter a Limit State. Such summary data shall be broken down as follows:

1. Partition stocks by category
  - a. Tier 1 non-ETP issues > \$3.00
  - b. Tier 1 non-ETP issues >= \$0.75 and <= \$3.00
  - c. Tier 1 non-ETP issues <\$0.75
  - d. Tier 1 non-leveraged ETPs in each of above categories
  - e. Tier 1 leveraged ETPs in each of above categories

- f. Tier 2 non-ETPs in each of above categories
- g. Tier 2 non-leveraged ETPs in each of above categories
- h. Tier 2 leveraged ETPs in each of above categories
2. Partition by time of day
  - a. Opening (prior to 9:45 am ET)
  - b. Regular (between 9:45 am ET and 3:35 pm ET)
  - c. Closing (after 3:35 pm ET)
  - d. Within five minutes of a Trading Pause re-open or IPO open
3. Track reasons for entering a Limit State, such as:
  - a. Liquidity gap—price reverts from a Limit State Quotation and returns to trading within the Price Bands
  - b. Broken trades
  - c. Primary Listing Exchange manually declares a Trading Pause pursuant to Section (VII)(2) of the Plan
  - d. Other

B. Determine (1), (2) and (3) for when a Trading Pause has been declared for an NMS Stock pursuant to the Plan.

**II. Raw Data** (all Participants, except A–E, which are for the Primary Listing Exchanges only)

### A. Record of every Straddle State

1. Ticker, date, time entered, time exited, flag for ending with Limit State, flag for ending with manual override.
2. Pipe delimited with field names as first record.

### B. Record of every Price Band

1. Ticker, date, time at beginning of Price Band, Upper Price Band, Lower Price Band
2. Pipe delimited with field names as first record

### C. Record of every Limit State

1. Ticker, date, time entered, time exited, flag for halt
2. Pipe delimited with field names as first record

### D. Record of every Trading Pause or halt

1. Ticker, date, time entered, time exited, type of halt (*i.e.*, regulatory halt, non-regulatory halt, Trading Pause pursuant to the Plan, other)
2. Pipe delimited with field names as first record

E. Data set or orders entered into reopening auctions during halts or Trading Pauses

1. Arrivals, Changes, Cancels, # shares, limit/market, side, Limit State side

2. Pipe delimited with field name as first record
- F. Data set of order events received during Limit States
- G. Summary data on order flow of arrivals and cancellations for each 15-second period for discrete time periods and sample stocks to be determined by the SEC in subsequent data requests. Must indicate side(s) of Limit State.
  1. Market/marketable sell orders arrivals and executions
    - a. Count
    - b. Shares
    - c. Shares executed
  2. Market/marketable buy orders arrivals and executions
    - a. Count
    - b. Shares
    - c. Shares executed
  3. Count arriving, volume arriving and shares executing in limit sell orders above NBBO mid-point
  4. Count arriving, volume arriving and shares executing in limit sell orders at or below NBBO mid-point (non-marketable)
  5. Count arriving, volume arriving and shares executing in limit buy orders at or above NBBO mid-point (non-marketable)
  6. Count arriving, volume arriving and shares executing in limit buy orders below NBBO mid-point
  7. Count and volume arriving of limit sell orders priced at or above NBBO mid-point plus \$0.05
  8. Count and volume arriving of limit buy orders priced at or below NBBO mid-point minus \$0.05
  9. Count and volume of (3–8) for cancels
  10. Include: ticker, date, time at start, time of Limit State, all data item fields in 1, last sale prior to 15-second period (null if no trades today), range during 15-second period, last trade during 15-second period

**III. On May 28, 2015, Participants provided to the SEC a supplemental joint assessment relating to the impact of the Plan and calibration of the Percentage Parameters as follows:**

- A. Assess the statistical and economic impact on liquidity of approaching Price Bands.
- B. Assess the statistical and economic impact of the Price Bands on erroneous trades.
- C. Assess the statistical and economic impact of the appropriateness of the Percentage Parameters used for the Price Bands.
- D. Assess whether the Limit State is the appropriate length to allow for liquidity replenishment when a Limit State is reached because of a temporary liquidity gap.
- E. Evaluate concerns from the options markets regarding the statistical and economic impact of Limit States on liquidity and market quality in the options markets. (Participants that operate options exchange should also prepare such assessment reports.)
- F. Assess whether the process for entering a Limit State should be adjusted and whether Straddle States are problematic.

G. Assess whether the process for exiting a Limit State should be adjusted.

H. Assess whether the Trading Pauses are too long or short and whether the reopening procedures should be adjusted.

[FR Doc. 2017–20974 Filed 9–29–17; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF STATE

[Public Notice: 10148]

### Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: “David Hockney” Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition “David Hockney,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to an agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about November 21, 2017, until on or about February 25, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**Alyson Grunder,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2017–20960 Filed 9–29–17; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

[Public Notice: 10149]

### Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: “Terracotta Army: Legacy of the First Emperor of China” Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition “Terracotta Army: Legacy of the First Emperor of China,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Virginia Museum of Fine Arts, Richmond, Virginia, from on or about November 14, 2017, until on or about March 11, 2018, at the Cincinnati Art Museum, Cincinnati, Ohio, from on or about April 18, 2018, until on or about August 12, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**Alyson Grunder,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2017–20961 Filed 9–29–17; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

[Public Notice: 10150]

**Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: Exhibition of Two Impressionist-Era Paintings**

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that two objects to be exhibited in the Impressionist Paintings Gallery of The J. Paul Getty Museum at the Getty Center, imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum at the Getty Center, Los Angeles, California, from on or about April 1, 2018, until on or about October 3, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PD, SA-5, Suite 5H03, Washington, DC 20522-0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257-1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**Alyson Grunder,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2017-20962 Filed 9-29-17; 8:45 am]

**BILLING CODE 4710-05-P**

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration****Twenty-Fourth RTCA SC-223 IPS and AeroMACS Plenary**

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

**ACTION:** Twenty-Fourth RTCA SC-223 IPS and AeroMACS Plenary.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of Twenty-Fourth RTCA SC-223 IPS and AeroMACS Plenary. SC-223 is a subcommittee to RTCA.

**DATES:** October 22–October 27, 2017 9:00–5:00 p.m.

**ADDRESSES:** The meeting will be held at: The MITRE Corporation, 7515 Colshire Drive, McLean, VA 22102.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Morrison at [rmorrison@rtca.org](mailto:rmorrison@rtca.org) or 202-330-0654, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org>.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of the Twenty-Fourth RTCA SC-223 IPS and AeroMACS Plenary. The agenda will include the following:

**October 22–27, 2017 9:00 a.m.–5:00 p.m.**

1. Welcome, Introductions, Administrative Remarks
2. Review of previous meeting notes and action items
3. Review of Current State of Industry Standards
  - a. ICAO WG-I
  - b. AEEC IPS Sub Committee
4. Current State of Industry Activities
  - a. SESAR Programs
  - b. ESA IRIS Precursor
  - c. Any Other Activities
5. IPS Technical Discussions
  - a. Review of IPS high level profile
  - b. Review of IPS RFC detail Profiles
  - c. Prioritization of additional IETF RFCs for Profiling
6. Any Other Topics of Interest
7. Plans for Next Meetings
8. Review of Action Items and Meeting Summary
9. Adjourn

Attendance is open to the interested public but limited to space availability. Registration is required to attend. With the approval of the chairman, members

of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

**Mohannad Dawoud,**

*Management & Program Analyst, Partnership Contracts Branch, ANG-A17, NextGen, Procurement Services Division, Federal Aviation Administration.*

[FR Doc. 2017-20968 Filed 9-29-17; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration****Notice of Submission Deadline for Schedule Information for Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport for the Summer 2018 Scheduling Season**

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

**ACTION:** Notice of submission deadline.

**SUMMARY:** Under this notice, the FAA announces the submission deadline of October 5, 2017, for summer 2018 flight schedules at Chicago O'Hare International Airport (ORD), John F. Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Newark Liberty International Airport (EWR), and San Francisco International Airport (SFO), in accordance with the International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG). The deadline coincides with the schedule submission deadline for the IATA Slot Conference for the summer 2018 scheduling season.

**DATES:** Schedules must be submitted no later than October 5, 2017.

**ADDRESSES:** Schedules may be submitted by mail to the Slot Administration Office, AGC-200, Office of the Chief Counsel, 800 Independence Avenue SW., Washington, DC 20591; facsimile: 202-267-7277; or by email to: [7-AWA-slotadmin@faa.gov](mailto:7-AWA-slotadmin@faa.gov).

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey Planty, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone

number: 202-267-0613; email: [jeffrey.planty@faa.gov](mailto:jeffrey.planty@faa.gov).

**SUPPLEMENTARY INFORMATION:** The FAA has designated EWR, LAX, ORD, and SFO as IATA Level 2 airports and JFK as an IATA Level 3 airport under the WSG. The FAA currently limits scheduled operations at JFK by Order until October 27, 2018.<sup>1</sup>

The FAA is primarily concerned about scheduled and other regularly conducted commercial operations during peak hours, but carriers may submit schedule plans for the entire day. At ORD, the peak hours are 0700 to 2100 Central Time (1200 to 0200 UTC), at LAX and SFO from 0600 to 2300 Pacific Time (1300 to 0600 UTC), and at EWR and JFK from 0600 to 2300 Eastern Time (1000 to 0300 UTC). Carriers should submit schedule information in sufficient detail including, at minimum, the marketing or operating carrier, flight number, scheduled time of operation, frequency, aircraft equipment, and effective dates. IATA standard schedule information format and data elements (Standard Schedules Information Manual or SSIM, Chapter 6) may be used. The WSG provides additional information on schedule submissions and schedule updates at Level 2 and Level 3 airports.

The U.S. summer scheduling season is from March 25 through October 27, 2018, in recognition of the IATA northern summer period. The FAA understands there may be differences in schedule times due to different U.S. daylight saving time dates and will accommodate these differences to the extent possible.

The FAA generally uses average hourly runway capacity throughput for the schedule review at Level 2 airports, considering any differences associated with runway construction or other relevant operational and performance factors. The FAA will continue that practice to review the summer 2018 proposed schedules.

Airlines planning operations at LAX should be advised the airport plans construction on Runway 7L/25R and is expected to close the runway from mid-January to mid-May 2018. Los Angeles World Airports (LAWA), the airport operator, is currently finalizing construction plans. The FAA is reviewing the anticipated capacity impacts of the construction along with recent operational performance and demand trends. This includes surface congestion issues that are increasing

operational complexity and impacting air traffic control as it manages surface movements. The FAA expects continuing discussions with LAWA, airlines, and other stakeholders on ways to reduce congestion and delay and manage operations more efficiently. LAWA conducts monthly meetings on construction and other operational issues that include local FAA air traffic control facilities, airlines, and other stakeholders. Such meetings may be the best regular source of construction project updates and the anticipated impacts.

In 2016, the FAA found it could not justify continued Level 3 slot controls at EWR as the operations were consistently below the allocated limits and the airport was underutilized. The FAA changed EWR from Level 3 to Level 2 effective with the winter 2016 scheduling season. The FAA anticipated as a result of the Level 2 decision, an increase in flights which could provide competitive and economic benefits. The FAA also anticipated that with the increase in flights, delays would increase above 2016 levels but would remain within the levels accepted when the FAA established Level 3 in summer 2008. In reviewing schedules for summer 2018, as well as any new requests for winter 2017, the FAA will consider the recent operational performance metrics including the average hourly runway throughput trends.<sup>2</sup>

Our review of the average adjusted airport runway capacity indicates an average of 79 hourly operations, which is below the limit in the FAA 2008 Order, and below the levels currently scheduled in some hours. For the winter 2016 season, the FAA goal was up to 79 movements in an hour with some reduced levels in adjacent hours to provide recovery periods. This was meant to allow a transition from Level 3 to the first scheduling season as Level 2. For the summer 2018 season, the performance data suggest a similar approach may improve performance. The FAA has determined a scheduling limit of up to 79 flights an hour is appropriate. The FAA will accept flights above that limit provided they were typically operated by the same airline

for the summer 2017 season. At the same time, the FAA plans to work with airlines to retine some flights to less congested periods and have some hours to provide recovery periods. The mix of arrivals and departures, offsets for hours that may be above the limits, and the distribution of flights within an hour or adjacent hours will be considered. Beyond baseline flights, the FAA does not intend to approve new flights unless they can be accommodated within the limit. Based on demand for the summer 2017 scheduling season, the FAA anticipates the 1100 to 1259 and 1800 to 0059 UTC hours will be the peak periods without available capacity for new flights. Consistent with the WSG, carriers should be prepared to adjust schedules to meet available capacity in order to minimize potential congestion and delay.

The Level 2 airports also have a separate schedule facilitation process managed by the airport operator or a designated representative for certain types of flights, such as international passenger flights, or at particular terminals or gates. Those processes with the individual airports or terminals will continue separately from, and in addition to, the FAA review of schedules based on runway capacity. Airlines should submit schedule information directly to the airport operator representatives in accordance with the local procedures. The FAA may consider the need to harmonize terminal and runway availability in the schedule review process.

Issued in Washington, DC on September 21, 2017.

**Michael C. Artist,**

*Vice President, System Operations Services.*

[FR Doc. 2017-21045 Filed 9-27-17; 4:15 pm]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2017-77]

#### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of title 14, Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this

<sup>1</sup> Operating Limitations at John F. Kennedy International Airport, 73 FR 3510 (Jan. 18, 2008) as amended 81 FR 32636 (May 24, 2016) and 81 FR 40167 (June 21, 2016).

<sup>2</sup> The FAA typically determines an airport's average adjusted runway capacity or throughput for Level 2 and Level 3 airports by reviewing hourly data on the arrival and departure rates that air traffic control indicates could be accepted for that hour. We also review the actual number of arrivals and departures that operated in the same hour. The higher of the two numbers, "called" or actual, are used for these purposes. Some dates may be excluded from analysis such as during periods when extended airport closures or construction impacts capacity.

notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before October 12, 2017.

**ADDRESSES:** Send comments identified by docket number FAA–2017–0849 using any of the following methods:

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

- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

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

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

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lynette Mitterer, AIR–673, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email [Lynette.Mitterer@faa.gov](mailto:Lynette.Mitterer@faa.gov), phone (425) 227–1047; or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email [alphonso.pendergrass@faa.gov](mailto:alphonso.pendergrass@faa.gov), phone (202) 267–4713.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington, on September 26, 2017.

**Suzanne Masterson,**  
*Acting Manager, Transport Standards Branch.*

#### Petition for Exemption

*Docket No.:* FAA–2017–0849.

*Petitioner:* Lockheed Martin Aeronautics Company.

*Section of 14 CFR Affected:*  
§ 25.981(a)(3).

*Description of Relief Sought:*  
Alternate requirements for lightning protection of fuel tank structure and systems for the Lockheed Martin Model 382J Type Design Update (TDU) 382J Series aircraft.

[FR Doc. 2017–21022 Filed 9–29–17; 8:45 am]

**BILLING CODE 4910–13–P**

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

#### Thirty Sixth RTCA SC–216 Aeronautical Systems Security Plenary

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

**ACTION:** Thirty Sixth RTCA SC–216 Aeronautical Systems Security Plenary.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of Thirty Sixth RTCA SC–216 Plenary.

**DATES:** The meeting will be held November 13–17, 2017 9:00 a.m.–5:00 p.m. CET.

**ADDRESSES:** The meeting will be held at: EASA (Mon–Thu), Avenue de Cortenbergh 100, 1040 Brussels, Belgium, EUROCONTROL (Fri), Rue de la Fusee, 96, 1130 Bruxelles (Haren), Brussels, Belgium.

#### FOR FURTHER INFORMATION CONTACT:

Karan Hofmann at [khofmann@rtca.org](mailto:khofmann@rtca.org) or 202–330–0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at <http://www.rtca.org>. Registration is required.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Thirty Sixth RTCA SC–216 Plenary. The agenda will include the following:

**Monday, November 13, 2017—9:00 a.m.–5:00 p.m. (EASA)**

1. Welcome and Administrative Remarks
2. Introductions
3. Agenda Review

4. Meeting-Minutes Review
5. Review Joint Action List
6. Continuation of Plenary or Working Group Sessions

**Tuesday, November 14, 2017—9:00 a.m.–5:00 p.m. (EASA)**

Continuation of Plenary or Working Group Sessions

**Wednesday, November 15, 2017—9:00 a.m.–5:00 p.m. (EASA)**

Continuation of Plenary or Working Group Sessions

**Thursday, November 16, 2017—9:00 a.m.–5:00 p.m. (EASA)**

Continuation of Plenary or Working Group Sessions

**Friday, November 17, 2017—9:00 a.m.–12:00 p.m. (EUROCONTROL)**

1. Schedule Update
2. Date, Place and Time of Next Meeting
3. New Business
4. Adjourn Plenary

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 27, 2017.

**Mohannad Dawoud,**

*Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.*

[FR Doc. 2017–21057 Filed 9–29–17; 8:45 am]

**BILLING CODE 4910–13–P**

#### DEPARTMENT OF TRANSPORTATION

##### Federal Transit Administration

[FTA Docket No. FTA 2017–0023]

#### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their

expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on June 19, 2017 (82 FR 27958).

**DATES:** Comments must be submitted on or before November 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE., Mail Stop TAD-10, Washington, DC 20590 (202) 366-0354 or [tia.swain@dot.gov](mailto:tia.swain@dot.gov).

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On June 19, 2017, published a 60-day notice (82 FR 27958) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* Survey of FTA Stakeholders.  
*OMB Control Number:* 2132-0564.

*Type of Request:* Revision of a currently approved information collection.

*Abstract:* Executive Order 12862, "Streamlining Service Delivery and Improving Customer Service," requires FTA to identify its stakeholders and address how the agency will provide services in a manner that seeks to streamline service delivery and improve the experience of its customers. The survey covered in this request will provide FTA with a means to gather data directly from its stakeholders in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback FTA means information that provides useful insights on perceptions and opinions, but the information requests are not statistical surveys that yield quantitative results generalizable to the population of interest. The information obtained from the survey will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between FTA and its customers and stakeholders. The survey will be limited to data collections that solicit voluntary opinions and will not involve information that is required by regulations.

*Annual Estimated Total Burden Hours:* 1,188 hours.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street NW., Washington, DC 20503, Attention: FTA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: [oira\\_submissions@omb.eop.gov](mailto:oira_submissions@omb.eop.gov).

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information

on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**William Hyre,**

*Deputy Associate Administrator for Administration.*

[FR Doc. 2017-21051 Filed 9-29-17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA-2016-0065]

### Reports, Forms, and Record Keeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

**ACTION:** Request for comment on the renewal of collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before December 1, 2017.

**ADDRESSES:** You may submit comments using any of the following methods. All comments must have the applicable DOT docket number (*i.e.*, NHTSA-2016-0065) noted conspicuously on them.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, M-30: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001, between 9 a.m. and 5 p.m. ET, Monday through

Friday, except Federal holidays.  
Telephone: 1-800-647-5527.

• Fax: 202-493-2251.

**Instructions:** All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

**Docket:** For access to comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For further information, or for background documents, contact Stephen Hench, Office of Chief Counsel (NCC-0100), Room W41-229, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202-366-2992.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation, see 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use

of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

**Title:** Defect and Noncompliance Reporting and Notification.

**Type of Request:** Renewal of a currently approved information collection.

**OMB Control Number:** 2127-0004.

**Affected Public:** Businesses or individuals.

**Abstract:** This notice requests comment on NHTSA's proposed renewal to approved collection of information OMB No. 2127-0004. This collection covers the information collection requirements found within various statutory sections in the Motor Vehicle Safety Act of 1966 (Act), 49 U.S.C. 30101, *et seq.*, that address and require manufacturer notifications to NHTSA of safety-related defects and failures to comply with Federal Motor Vehicle Safety Standards (FMVSS) in motor vehicles and motor vehicle equipment, as well as the provision of particular information related to the ensuing owner and dealers notifications and free remedy campaigns that follow those notifications. The sections of the Act imposing these requirements include 49 U.S.C. 30118, 30119, 30120, and 30166. Many of these requirements are implemented through, and addressed with more specificity in, 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* (Part 573) and 49 CFR 577, *Defect and Noncompliance Notification* (Part 577).

Pursuant to the Act, motor vehicle and motor vehicle equipment manufacturers are obligated to notify, and then provide various information and documents to, NHTSA in the event a safety defect or noncompliance with Federal Motor Vehicle Safety Standards (FMVSS) is identified in products they manufactured. See 49 U.S.C. 30118(b) and 49 CFR 573.6. Manufacturers are further required to notify owners, purchasers, dealers, and distributors about the safety defect or noncompliance. See 49 U.S.C. 30118(b), 30120(a); 49 CFR 577.7, 577.13. Manufacturers are required to provide to NHTSA copies of communications pertaining to recall campaigns that they issue to owners, purchasers, dealers, and distributors. See 49 U.S.C. 30166(f); 49 CFR 573.6(c)(10).

Manufacturers are also required to file with NHTSA a plan explaining how

they intend to reimburse owners and purchasers who paid to have their products remedied before being notified of the safety defect or noncompliance, and explain that plan in the notifications they issue to owners and purchasers about the safety defect or noncompliance. See 49 U.S.C. 30120(d) and 49 CFR 573.13. Manufacturers are further required to keep lists of the respective owners, purchasers, dealers, distributors, lessors, and lessees of the products determined to be defective or noncompliant and involved in a recall campaign, and are required to provide NHTSA with a minimum of six quarterly reports reporting on the progress of their recall campaigns. See 49 CFR 573.8 and 573.7, respectively.

In addition, in an enforcement action, certain manufacturers may be required by administrative order to conduct supplemental recall communications utilizing non-traditional means (e.g., text messaging, social media) crucial to achieving completion of a unique, large-scale recall. Presently, NHTSA is overseeing recalls of unprecedented complexity involving Takata air bag inflators, where it has required such supplemental owner communications.<sup>1</sup> NHTSA specifically seeks comment on its estimates of the supplemental recall communications associated with the Takata recalls.

The Act and Part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns. These requirements relate to the proper disposal of recalled tires, including a requirement that the manufacturer conducting the tire recall submit a plan and provide specific instructions to certain persons (such as dealers and distributors) addressing that disposal, and a requirement that those persons report back to the manufacturer certain deviations from the plan. See 49 U.S.C. 30120(d) and 49 CFR 573.6(c)(9). The regulations also require that manufacturers report to NHTSA intentional and knowing sales or leases of defective or noncompliant tires.

49 U.S.C. 30166(n) and its implementing regulation found at 49 CFR 573.10 mandate that anyone who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire that is not compliant with FMVSS, and with actual knowledge that the tire manufacturer has notified its dealers of the defect or noncompliance as required under the Act, is required to report that sale or lease to NHTSA no

<sup>1</sup> See "Notice of Coordinated Remedy Program Proceeding for the Replacement of Certain Takata Air Bag Inflator," available at <https://www.regulations.gov/docket?D=NHTSA-2015-0055>.

more than five working days after the person to whom the tire was sold or leased takes possession of it.

**Estimated Burden:** The existing information collection associated with 49 CFR part 573 and portions of 49 CFR part 577 currently has an estimated annual burden of 36,070 hours associated with an estimated 275 respondents per year.<sup>2</sup> Our prior estimates of the burden hours and cost associated with the requirements currently covered by this information collection require adjustment as follows.

Based on current information, we estimate 274 distinct manufacturers filing an average of 963 Part 573 Safety Recall Reports each year. This is a change from our previous estimate of 854 Part 573 Safety Recall Reports filed by 275 manufacturers each year. In addition, with reference to the metric associated with NHTSA's VIN Look-up Tool regulation, see 49 CFR 573.15, we continue to estimate it takes the 17 major passenger-vehicle manufacturers (that produce more than 25,000 vehicles annually) more burden hours to complete these Reports to NHTSA. *See* 81 FR 70270 (October 11, 2016). Between 2014 and 2016, the major passenger-vehicle manufacturers conducted an average of 299 recalls annually.

We continue to estimate that maintenance of the required owner, purchaser, dealer, and distributors lists requires 8 hours a year per manufacturer. We also continue estimate it takes a major passenger-vehicle manufacturer 20 hours to complete each notification report to NHTSA, and it takes all other manufacturers 4 hours. Accordingly, we estimate the annual burden hours related to the reporting to NHTSA of a safety defect or noncompliance for the 17 major passenger vehicle-manufacturers to be 5,980 hours annually (299 notices  $\times$  20 hours/report), and that all other manufacturers require a total of 2,656 hours annually (664 notices  $\times$  4 hours/report) to file their notices. Accordingly, the estimated annual burden hours related to the reporting to NHTSA of a safety defect or noncompliance is 10,828 hours (5,980 hours + 2,656 hours) + (274 MFRs  $\times$  8 hours to maintain purchaser lists).<sup>3</sup>

We continue to estimate that an additional 40 hours will be needed to account for major passenger-vehicle manufacturers adding details to Part 573 Safety Recall Reports relating to the

intended schedule for notifying its dealers and distributors, and tailoring its notifications to dealers and distributors in accordance with the requirements of 49 CFR 577.13. An additional 2 hours will be needed to account for this obligation in other manufacturers' Safety Recall Reports. This burden is estimated at 13,288 hours annually (664 notices  $\times$  2 hours/notification) + (299 notices  $\times$  40 hours/notification).

49 U.S.C. 30166(f) requires manufacturers to provide to the Agency copies of all communications regarding defects and noncompliances sent to owners, purchasers, and dealerships. Manufacturers must index these communications by the year, make, and model of the vehicle as well as provide a concise summary of the subject of the communication. We continue to estimate this burden requires 30 minutes for each vehicle recall. This totals an estimated 482 hours annually (963 recalls  $\times$  .5 hours).

In the event a manufacturer supplied the defective or noncompliant product to independent dealers through independent distributors, that manufacturer is required to include in its notifications to those distributors an instruction that the distributors are to then provide copies of the manufacturer's notification of the defect or noncompliance to all known distributors or retail outlets further down the distribution chain within five working days. *See* 49 CFR 577.7(c)(2)(iv). As a practical matter, this requirement would only apply to equipment manufacturers since vehicle manufacturers generally sell and lease vehicles through a dealer network, and not through independent distributors. We believe our previous estimate of 95 equipment recalls per year needs to be adjusted to 87 equipment recalls per year to better reflect recent data. Although distributors are not required to follow that instruction, we expect that they will, and have estimated the burden associated with these notifications (identifying retail outlets, making copies of the manufacturer's notice, and mailing) to be 5 hours per recall campaign. Assuming an average of 3 distributors per equipment item, (which is a liberal estimate given that many equipment manufacturers do not use independent distributors) the total number of burden hours associated with this third-party notification burden is approximately 1,305 hours per year (87 recalls  $\times$  3 distributors  $\times$  5 hours).

As for the burden linked with a manufacturer's preparation of and notification concerning its reimbursement for pre-notification

remedies, we continue to estimate that the preparation of a reimbursement plan takes approximately 4 hours annually, an additional .5 hours per year is spent tailoring the plan to particular defect and noncompliance notifications to NHTSA and adding tailored language about the plan to a particular safety recall's owner notification letters, and an additional 12 hours annually is spent disseminating plan information, for a total 4,866 annual burden hours ((274 MFRs  $\times$  4 hours to prepare plan) + (963 recalls  $\times$  .5 hours tailoring plan for each recall) + (274 MFRs  $\times$  12 hours to disseminate plan information)). For more information about how we calculated these estimates please see the **Federal Register** Notices 81 FR 70269 (October 11, 2016).

The Safety Act and 49 CFR part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns, as well as a statutory and regulatory reporting requirement that anyone who knowingly and intentionally sells or leases a defective or noncompliant tire notify NHTSA of that activity.

Manufacturers are required to include specific information related to tire disposal in the notifications they provide NHTSA concerning identification of a safety defect or noncompliance with FMVSS in their tires, as well as in the notifications they issue to their dealers or other tire outlets participating in the recall campaign. *See* 49 CFR 573.6(c)(9). We continue to estimate that the agency administers 12 tire recalls each year, on average. We continue to estimate that the inclusion of this additional information will require an additional two hours of effort beyond the subtotal above associated with non-tire recall campaigns. This additional effort consists of one hour for the NHTSA notification and one hour for the dealer notification for a total of 24 burden hours (12 tire recalls a year  $\times$  2 hours per recall).

Manufacturer-owned or controlled dealers are required to notify the manufacturer and provide certain information should they deviate from the manufacturer's disposal plan. Consistent with our previous analysis, we continue to ascribe zero burden hours to this requirement since to date no such reports have been provided and our original expectation that dealers would comply with manufacturers' plans has proven true.

Accordingly, we continue to estimate 24 burden hours a year will be spent complying with the tire recall campaign requirements found in 49 CFR 573.6(c)(9).

<sup>2</sup> *See* 81 FR 70269 (October 11, 2016).

<sup>3</sup> For more information about how we derived these and certain other estimates please see 81 FR 70269 (October 11, 2016).

The agency recently received one report under 49 U.S.C. 30166(n) and its implementing regulation at 49 CFR 573.10 of a defective or noncompliant tire being intentionally sold or leased, so our previous estimate of zero burden hours for this regulatory requirement is being revised. The agency estimates 1 burden hour annually will be spent preparing and submitting such reports.

We continue to believe nine vehicle manufacturers, who did not operate VIN-based recalls lookup systems prior to August 2013, incur certain recurring burdens on an annual basis. We continue to estimate that 100 burden hours will be spent on system and database administrator support. These 100 burden hours include: Backup data management and monitoring; database management, updates, and log management; and data transfer, archiving, quality assurance, and cleanup procedures. We continue to estimate another 100 burden hours will be incurred on web/application developer support. These burdens include: Operating system and security patch management; application/web server management; and application server system and log files management. We continue to estimate these burdens will total 1,800 hours each year (9 MFRs  $\times$  200 hours). We continue to estimate the recurring costs of these burden hours will be \$30,000 per manufacturer.<sup>4</sup> We continue to estimate that the total cost to the industry from these recurring expenses will total \$270,000, on an annual basis (9 MFRs  $\times$  \$30,000).

Changes to 49 CFR part 573 in 2013 required 27 manufacturers to update each recalled vehicle's repair status no less than every 7 days, for 15 years from the date the VIN is known to be included in the recall. This ongoing requirement to update the status of a VIN for 15 years continues to add a recurring burden on top of the one-time burden to implement and operate these online search tools. We continue to estimate that 8 affected motorcycle manufacturers will make recalled VINs available for an average of 2 recalls each year and 19 affected passenger-vehicle manufacturers will make recalled VINs available for an average of 8 recalls each year. We believe it will take no more than 1 hour, and potentially much less with automated systems, to update the VIN status of vehicles that have been remedied under the manufacturer's remedy program. We continue to

estimate this will require 8,736 burden hours per year (1 hour  $\times$  2 recalls  $\times$  52 weeks  $\times$  8 MFRs + 1 hour  $\times$  8 recalls  $\times$  52 weeks  $\times$  19 MFRs) to support the requirement to update the recalls completion status of each VIN in a recall at least weekly for 15 years.

As the number of Part 573 Recall Reports has increased in recent years, so has the number of quarterly reports that track the completion of safety recalls. Our previous estimate of 3,800 quarterly reports received annually is now revised upwards to 4,498 quarter reports received annually. We continue to estimate it takes manufacturers 10 minutes to gather the pertinent information for each quarterly report, and 4 additional hours for the 17 major passenger-vehicle manufacturers. We therefore now estimate that the quarterly reporting burden pursuant to Part 573 totals 818 hours ((4,498 quarterly reports  $\times$  10 minutes/report) + (17 MFRs  $\times$  4 hours for electronic submission)).

We continue to estimate a small burden of 2 hours annually in order to set up a manufacturer's online recalls portal account with the pertinent contact information and maintaining/updating their account information as needed. We estimate this will require a total of 548 hours annually (2 hours  $\times$  274 MFRs).

We continue to estimate that 20 percent of Part 573 reports will involve a change or addition regarding recall components, and that at one hour per amended report, this totals 193 burden hours per year (963 recalls  $\times$  .20 = 193 recalls; 193  $\times$  1 = 193 hours).

As to the requirement that manufacturers notify NHTSA in the event of a bankruptcy, we expect this notification to take an estimated 2 hours to draft and submit to NHTSA. We continue to estimate that only 10 manufacturers might submit such a notice to NHTSA each year, so we calculate the total burden at 20 hours (10 MFRs  $\times$  2 hours).

We continue to estimate that it takes manufacturers an average of 8 hours to draft their notification letters, submit them to NHTSA for review, and then finalize them for mailing to their affected owners and purchasers. We estimate that the 49 CFR part 577 requirements result in 7,704 burden hours annually (8 hours per recall  $\times$  963 recalls per year).

The burden estimate associated with the regulation that requires interim owner notifications within 60 days of filing a Part 573 Safety Recall Report must be revised upward. We previously calculated that about 10 percent of past recalls require an interim notification

mailing, but recent trends show that 12 percent of recalls require an interim owner notification mailing. We continue to estimate the preparation of an interim notification can take up to 10 hours. We therefore estimate that 1160 burden hours are associated with the 60-day interim notification requirement (963 recalls  $\times$  .12 = 116 recalls; 116 recalls times 10 hours per recall = 1160 hours).

As for costs associated with notifying owners and purchasers of recalls, we continue to estimate a cost of \$1.50 per first class mail notification, on average. This cost estimate includes the costs of printing, mailing, as well as the costs vehicle manufacturers may pay to third-party vendors to acquire the names and addresses of the current registered owners from state and territory departments of motor vehicles. In reviewing recent recall figures, we determined that an estimated 75.8 million letters are mailed yearly totaling \$113,700,000 (\$1.50 per letter  $\times$  75,800,000 letters). The requirement in 49 CFR part 577 for a manufacturer to notify their affected customers within 60 days would add an additional \$13,644,000 (75,800,000 letters  $\times$  .12 requiring interim owner notifications = 9,096,000 letters; 9,096,000  $\times$  \$1.50 = \$13,644,000). In total, we estimate that the current 49 CFR part 577 requirements cost manufacturers a total of \$127,344,000 annually (\$113,700,000 for owner notification letters + \$13,644,000 for interim notification letters = \$127,344,000).

NHTSA further has authority to require that, in an enforcement action, vehicle manufacturers conduct supplemental recall communications, potentially utilizing non-traditional means (e.g., text messaging, social media). This is currently occurring in the Takata recalls, which involve 19 vehicle manufacturers and over 46 million defective inflators currently under recall in approximately 34 million vehicles that need to be recalled as quickly as possible, given that thirteen people in the United States have lost their lives to a rupturing Takata inflator, and more than two hundred people have reported associated injuries, many of which were disfiguring or life-threatening. The scope of the Takata recall has been unprecedented in the agency's history. Therefore, the below analysis only takes into account the expected paperwork burden of this collection over the next three years, without making any assumptions about the likelihood of another large-scale recall that leads to similar types of supplementary notices. However, the agency believes the lessons learned from the Takata recall

<sup>4</sup> \$8,000 (for data center hosting for the physical server) + \$12,000 (for system and database administrator support) + \$10,000 (for web/application developer support) = \$30,000.

will provide a useful guidepost in structuring any similar future action.

To address the scope and complexity of the Takata recall, NHTSA issued a Coordinated Remedy Order, as amended on December 9, 2016 (the “ACRO”), which requires affected vehicle manufacturers to conduct supplemental owner notification efforts in coordination with NHTSA and the Independent Monitor of Takata. On December 23, 2016, the Monitor, in consultation with NHTSA, issued Coordinated Communications Recommendations for vehicle owner outreach (“CCRs”), which includes a recommendation that vehicle manufacturers provide at least one form of consumer outreach per month for vehicles in a launched recall campaign (i.e., a recall where parts are available) until the vehicle is remedied (unless otherwise accounted for as scrapped, stolen, exported, or otherwise unreachable under certain procedures in the ACRO). See CCRs ¶1(b); ACRO ¶¶45–46. The Monitor also recommended that manufacturers utilize at least three non-traditional means of communication (postcards; email; telephone calls; text message; social media) as part of their overall outreach strategy. See CCRs ¶1(a). And the Monitor recommended including in these communications certain content, including certain safety-risk information. See *id.* ¶2. If a vehicle manufacturer does not wish to follow the Monitor’s recommendations, the ACRO permits the manufacturer to propose an alternative communication strategy to NHTSA and the Monitor.

The Monitor’s recommendations were adopted in significant part because research supports that frequent notifications using non-traditional means result in improved remedy completion.<sup>5</sup> The agency invites any additional feedback on the effectiveness of such outreach in future enforcement actions, as well as the paperwork burden associated with conducting that outreach.

To date, vehicle manufacturers and others have agreed that greater notification frequency is preferred over

less.<sup>6</sup> However, the agency is aware of generalized concerns about “notification fatigue” and invites comment on this phenomenon, including the optimal frequency, content, mode, and method of recall/defects notifications from manufacturers to consumers. The agency is also particularly interested in any research or data that relates to a recall with potential consequences of death or severe injury, as in the case of the Takata recalls. NHTSA also seeks comment on the content and language to include in these notifications, including relevant safety-risk information, to increase the likelihood that consumers remedy the issue as soon as possible.

NHTSA estimates a yearly average of 19 manufacturers will be issuing monthly supplemental communications over the next three years pursuant to the ACRO and the CCRs. Manufacturers may satisfy the CCRs through third-party vendors (which have been utilized by many manufacturers), in-house strategies, or some combination thereof. NHTSA estimates the cost for supplemental communications at \$0.44 per VIN per month.

The volume of outreach required by the ACRO and the CCRs (and the costs associated with that outreach) is a function of the number of unrepaired vehicles that are in a launched

campaign and are not otherwise accounted for as scrapped, stolen, exported, or otherwise unreachable. The schedule in Paragraph 35 of the ACRO delineates the expected remedy completion rate, by quarter, of vehicles in a launched remedy campaign.

Utilizing these variables, we estimate an initial annualized cost over the next three years of \$43,557,722 per year. However, NHTSA anticipates that recent settlement agreements in the Southern District of Florida multi-district litigation (MDL) governing economic-loss actions against five manufacturer defendants will discount this figure based on outreach efforts those defendants (Toyota, Subaru, Nissan, BMW, Mazda, and Honda) are required to conduct pursuant to their respective settlements. See generally *In re: Takata Airbag Products Liab. Litig.*, 14-cv-24009, MDL No. 2599 (S.D. Fla.). These outreach programs are to utilize non-traditional methods of outreach, including telephone, email, social media, and text messaging, and NHTSA anticipates they will produce outreach that would satisfy the minimum requirements of the CCRs. In calculating the estimated burden the relevant manufacturers would have incurred under the same methodology described above, NHTSA is discounting the annualized cost contemplated by the ACRO and the CCRs by \$15,721,393.

Accordingly, NHTSA estimates the terms of ACRO and the CCRs, assuming remedy-completion rates consistent with those prescribed in the former, contemplate an annualized cost of \$27,836,329 per year for the next three years (2018–2020). In addition, NHTSA estimates that manufacturers will take an average of 2 hours each month drafting or customizing supplemental recall communications utilizing non-traditional means, submitting them to NHTSA for review, and finalizing them to send to affected owners and purchasers. NHTSA therefore estimates that 456 burden hours annually are associated with issuing these supplemental recall communications: 12 months × 2 hours per month × 19 manufacturers = 456 hours.

Because of the forgoing burden estimates, we are revising the burden estimate associated with this collection. The 49 CFR part 573 and 49 CFR part 577 requirements found in today’s notice will require 51,773 hours each year. Additionally, manufacturers impacted by 49 CFR part 573 and 49 CFR part 577 requirements will incur a recurring annual cost estimated at \$127,614,000 total. The burden estimate in this collection contemplated for conducting supplemental recall

<sup>5</sup> See, e.g., GM Safety Recalls: *Innovations in Customer Outreach* (NHTSA Retooling Recalls Workshop, April 28, 2015) (recognizing efficacy of various methods of owner engagement, and citing customer recognition of GM’s “persistence” through multiple postcards and letters “seal[ing] the deal” for customer to seek timely recall remedy); Auto Alliance & NADA Survey Key Findings (November 2015), at 16 (observing dealers “[t]ry multiple attempts and methods [phone, email, mail] to contact customer” when trying to increase recall repair rates).

<sup>6</sup> See, e.g., GM Safety Recalls, *supra*; Auto Alliance & NADA Survey Key Findings, *supra*; GM letter to NHTSA in comment to ANPRM, Docket No. NHTSA–2016–0001 (March 23, 2016), at 2 (“The best approach is to leverage multiple communication channels and, where possible, capture and use the customer’s preferred method of communication. In those cases where consumers perceive non-repair to be low-risk, a “saturation” approach is sometimes effective. This approach increases the frequency of contact and alternates the means of communication.”); see also Susanne Schmidt & Martin Eisend, *Advertising Repetition: A Meta-Analysis on Effective Frequency in Advertising*, 44 J. Advertising 415, 425 (2015) (observing findings “clearly support the repetitionists’ view in the literature over the minimalists’ view: few exposures are not enough to achieve maximum response, but repetition is essential for consumer response”); *id.* at 426 (observing further that “many exposures in real-world settings are not completed (i.e. the consumer does not read/watch/listen to an ad message in its entirety), and higher exposure rates are necessary to reach optimum response”—accordingly, the study’s figures even “might understate the optimum exposure level needed in a real-world setting”); Blair Entenmann, Marketing Help!, *The Principles of Targeted Direct Mail Advertising* (2007) (“Timing may be a critical success factor—today they aren’t interested, but next month they might be. Repetition will generate a better response.”); Chuck Flantroy, *Direct Mail Works: The Power of Frequency*, Kessler Creative (August 31, 2016), available at <http://www.kesslercreative.com/marketing-tips-tricks/direct-mail-works-the-power-of-frequency/> (observing that “[a] huge factor to take into account is the timing of . . . mailing(s). Even if your first mailing falls on deaf ears, your second or third may come at just the perfect time when a recipient of your campaign is in need of your products or services”).

communications under administrative order to achieve completion of the Takata recalls is 456 hours each year. Additionally, that administrative order contemplates impacted manufacturers incurring an annual cost estimated at \$27,836,329. Therefore, in total, we estimate the burden associated with this collection to be 52,229 hours each year, with a recurring annual cost estimated at \$155,450,329.

**Estimated Number of Respondents—**  
NHTSA estimates that there will be approximately 274 manufacturers per year filing defect or noncompliance reports and completing the other information collection responsibilities associated with those filings. NHTSA estimates there will be an average of 19 manufacturers each year conducting supplemental nontraditional monthly outreach pursuant to administrative order in an enforcement action associated with the Takata recall.

**Jeffrey Giuseppe,**

*Acting Associate Administrator for Enforcement.*

[FR Doc. 2017-21053 Filed 9-29-17; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2016-0016]

### Pipeline Safety: Underground Natural Gas Storage Facility Annual Report

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of OMB approval.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) Office of Pipeline Safety (OPS) is announcing OMB approval of the annual report for Underground Natural Gas Storage Facilities.

**DATES:** Operators should submit the first annual report form for the 2017 calendar year by March 15, 2018.

**FOR FURTHER INFORMATION CONTACT:** Crystal Stewart, Program Analyst, Office of Pipeline Safety Operations Systems Division, at 202-366-1524 or by email at [crystal.stewart@dot.gov](mailto:crystal.stewart@dot.gov).

**SUPPLEMENTARY INFORMATION:** PHMSA regulations at 49 CFR 191.17 require each operator of an underground natural gas storage facility to submit an annual report on DOT PHMSA Form 7100.4-1 by March 15, for the preceding calendar year, except that the first annual report must be submitted by July 18, 2017. PHMSA extended the due date for the

submission of the first annual report, as stipulated in PHMSA's posting on its Web page (<https://www.phmsa.dot.gov/underground-storage-annual-report-submission-extension>). This annual report, originally required by July 18, 2017, would have captured data for the 2016 calendar year. PHMSA is revising the date of the first submission of the annual report. The first annual report now will be due on March 15, 2018, and will collect reported information for the 2017 calendar year.

OPS will post this information and further filing instructions on OPS's Web site at <http://www.phmsa.dot.gov/pipeline>.

Issued in Washington, DC, on September 26, 2017, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2017-21004 Filed 9-29-17; 8:45 am]

**BILLING CODE 4910-60-P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; Assistant Director for Licensing, tel.: 202-622-2480; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202-622-2410.

### SUPPLEMENTARY INFORMATION:

#### Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions

programs are available on OFAC's Web site ([www.treasury.gov/ofac](http://www.treasury.gov/ofac)).

### Notice of OFAC Action(s)

On September 26, 2017, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked pursuant to the relevant sanctions authorities listed below. Dealings in property subject to U.S. jurisdiction in which a person identified as Government of North Korea has an interest are prohibited effective as of the date of that status, which may be earlier than the date of OFAC's determination.

#### Individuals

1. KWAK, Chong-chol (a.k.a. KWAK, Jong-chol), Dubai, United Arab Emirates; DOB 01 Jan 1975; nationality Korea, North; Gender Male; Passport 563220533 (Korea, North) (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 of September 20, 2017, "Imposing Additional Sanctions With Respect to North Korea" (Executive Order 13810) for operating in the financial services industry in North Korea.

2. RYOM, Hui-bong (a.k.a. RYO'M, Hu'i-pong), Dubai, United Arab Emirates; DOB 18 Sep 1961; nationality Korea, North; Gender Male; Passport 745120026 (Korea, North) (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

3. PAK, Mun Il (a.k.a. PAK, Mun-il), Yanji, China; DOB 01 Jan 1965; nationality Korea, North; Gender Male; Passport 563335509 expires 27 Aug 2018; Korea Daesong Bank official (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

4. HO, Yong Il (a.k.a. HO', Yo'ng-il), Dandong, China; DOB 09 Sep 1968 (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

5. KANG, Min, Beijing, China; DOB 07 May 1980; nationality Korea, North; Gender Male; Passport 563132918 expires 04 Feb 2018; Korea Daesong Bank representative (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

6. KIM, Sang-ho, Yanji, China; DOB 16 May 1957; Passport 563337601; Korea Daesong Bank representative (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

7. KIM, Jong Man (a.k.a. KIM, Cho'ng-man), Korea, North; Zhuhai, China; DOB 16 Jul 1956; nationality Korea, North; Passport 918320780; Korea United Development Bank representative (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

8. KIM, Hyok Chol (a.k.a. KIM, Hyo'k-ch'o'l), Zhuhai, China; DOB 09 Jul 1978; Passport 472235761 expires 06 Jun 2017; Korea United Development Bank representative (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

9. MUN, Kyong Hwan (a.k.a. MUN, Kyo'ng-hwan), Korea, North; Dandong, China; DOB 22 Aug 1967; nationality Korea, North; Passport 381120660 expires 25 Mar 2016; Bank of East Land representative (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

10. PAE, Won Uk (a.k.a. PAE, Wo'n-uk), Beijing, China; DOB 22 Aug 1969; nationality Korea, North; Gender Male; Passport 472120208 (Korea, North) expires 22 Feb 2017; Korea Daesong Bank representative (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

11. PAK, Bong Nam (a.k.a. LUI, Wai Ming; a.k.a. PAK, Pong Nam; a.k.a. PAK, Pong-nam), Shenyang, China; DOB 06 May 1969; ILSIM International Bank Representative in Shenyang, China (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

12. CHU, Hyo'k (a.k.a. JU, Hyok), Vladivostok, Russia; DOB 23 Nov 1986; nationality Korea, North; Gender Male; Passport 836420186 (Korea, North) issued 28 Oct 2016 expires 28 Oct 2021; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK4].

Designated pursuant to Section 1(a)(iv) of Executive Order 13810 for being a North Korean person.

13. RI, U'n-so'ng (a.k.a. RI, Eun Song; a.k.a. RI, Un Song), Moscow, Russia; DOB 23 Jul 1969; Korea United Development Bank representative (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

14. PANG, Su Nam (a.k.a. PANG, So-nam; a.k.a. PANG, Sunam), Zhuhai, China; DOB 01 Oct 1964; Passport 472110138; ILSIM International Bank representative in Zhuhai, China (individual) [DPRK2] [DPRK4].

Designated pursuant to Section 1(a)(ii) of Executive Order 13687 of January 2, 2015, "Imposing Additional Sanctions With Respect to North Korea" (Executive Order 13687) for being an official of the Government of North Korea. Also designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

15. CHA, Sung Jun (a.k.a. CH'A, Su'ng-chun), Beijing, China; DOB 04 Jun 1966; nationality Korea, North; Passport 472434355 (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

16. JI, Sang Jun (a.k.a. CHI, Sang-chun), Moscow, Russia; DOB 03 May 1971 (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

17. KIM, Kyong Hyok (a.k.a. KIM, Kyo'ng-hyo'k), Shanghai, China; DOB 05 Nov 1985; Cheil Credit Bank representative (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

18. PAK, Chol Nam (a.k.a. PAK, Ch'o'l-nam), Beijing, China; DOB 16 Jun 1971; nationality Korea, North; Passport 745420413 expires 19 Nov 2020; Cheil Credit Bank representative in Beijing (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

19. RI, Ho Nam (a.k.a. RI, Ho-nam), Beijing, China; DOB 03 Jan 1967; nationality Korea, North; Passport 654120210 expires 21 Feb 2019; Ryugyong Commercial Bank representative (individual) [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

20. KIM, Tong Chol (a.k.a. KIM, Tong-ch'o'l), Shenyang, China; DOB 28 Jan 1966; Foreign Trade Bank of the Democratic People's Republic of Korea official (individual) [DPRK2].

Designated pursuant to Section 1(a)(ii) of Executive Order 13687 for being an official of the Government of North Korea.

21. KO, Chol Man (a.k.a. KO, Ch'o'l-man), Shenyang, China; DOB 30 Sep 1967; Passport 472420180; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

Designated pursuant to Section 1(a)(ii) of Executive Order 13687 for being an official of the Government of North Korea.

22. RI, Chun Hwan (a.k.a. RI, Ch'un-hwan), Zhuhai, China; DOB 21 Aug 1957; Passport 563233049 expires 09 May 2018; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

Designated pursuant to Section 1(a)(ii) of Executive Order 13687 for being an official of the Government of North Korea.

23. RI, Chun Song (a.k.a. RI, Ch'un-so'ng), Beijing, China; DOB 30 Oct 1965; Passport 654133553 expires 11 Mar 2019; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

Designated pursuant to Section 1(a)(ii) of Executive Order 13687 for being an official of the Government of North Korea.

24. CH'OE, So'k-min, Shenyang, China; DOB 25 Jul 1978; nationality Korea, North; Foreign Trade Bank of the Democratic People's Republic of Korea representative (individual) [DPRK2].

Designated pursuant to Section 1(a)(ii) of Executive Order 13687 for being an official of the Government of North Korea.

25. KIM, Kyong Il (a.k.a. KIM, Kyo'ng-il), Libya; DOB 01 Aug 1979; Gender Male; Passport 836210029; Foreign Trade Bank of the Democratic People's Republic of Korea deputy chief representative in Libya (individual) [DPRK2].

Designated pursuant to Section 1(a)(ii) of Executive Order 13687 for being an official of the Government of North Korea.

26. KU, Ja Hyong (a.k.a. KU, Cha-hyo'ng), Libya; DOB 08 Sep 1957; Gender Male; Foreign Trade Bank of the Democratic People's Republic of Korea chief representative in Libya (individual) [DPRK2].

Designated pursuant to Section 1(a)(ii) of Executive Order 13687 for being an official of the Government of North Korea.

*Entities*

1. AGRICULTURAL DEVELOPMENT BANK, Korea, North [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

2. CHEIL CREDIT BANK (a.k.a. FIRST CREDIT BANK; f.k.a. "KYONGYONG CREDIT BANK"), 3–18 Pyongyang Information Center, Potonggang District, Pyongyang, Korea, North; Beijing, China; Shenyang, China; Shanghai, China; SWIFT/BIC KYCBKPPYXXX [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

3. HANA BANKING CORPORATION LTD, Haebangsang Hotel, Jungsong-Dong, Sungri Street, Central District, Pyongyang, Korea, North; Dandong, China; SWIFT/BIC BRBKKPPIXXX [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

4. INTERNATIONAL INDUSTRIAL DEVELOPMENT BANK, Jongpyong-Dong, Pyong Chon District, Pyongyang, Korea, North [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

5. JINMYONG JOINT BANK, Korea, North; Dalian, China [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

6. JINSONG JOINT BANK, Korea, North [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

7. KORYO COMMERCIAL BANK LTD., Pyongyang, Korea, North; Beijing, China; Shenyang, China; SWIFT/BIC KCBKKPP1 [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

8. RYUGYONG COMMERCIAL BANK, Korea, North; Beijing, China; Dandong, China [DPRK4].

Designated pursuant to Section 1(a)(i) of Executive Order 13810 for operating in the financial services industry in North Korea.

9. CENTRAL BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, 58–1 Mansu-dong, Sungri Street, Central District, Pyongyang, Korea, North [DPRK3].

Identified as meeting the definition of the Government of North Korea as set forth in Section 9(d) of Executive Order 13722 of March 15, 2016, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea" (Executive Order 13722) because it is an agency, instrumentality, or controlled entity of the Government of North Korea.

10. FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (a.k.a. KOREA TRADE BANK; a.k.a. MOOYOKBANK; a.k.a. NORTH KOREA'S FOREIGN TRADE BANK), FTB Building, Jungsong-dong, Central District, Pyongyang, Korea, North; SWIFT/BIC FTBD KP PY [NPWMD] [DPRK3].

Identified as meeting the definition of the Government of North Korea as set forth in Section 9(d) of Executive Order 13722 because it is an agency, instrumentality, or controlled entity of the Government of North Korea.

Dated: September 26, 2017.

**Michael Mosier,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 2017–21049 Filed 9–29–17; 8:45 am]

**BILLING CODE 4810-AL-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Compensatory Stock Options Under Section 482 (T.D. 9088)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information collection requirements related to compensatory stock options under section 482.

**DATES:** Written comments should be received on or before December 1, 2017 to be assured of consideration.

**ADDRESSES:** Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for additional information or copies of the regulation should be directed to Taquesha Cain, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at [Taquesha.R.Cain@irs.gov](mailto:Taquesha.R.Cain@irs.gov).

#### SUPPLEMENTARY INFORMATION:

**Title:** Compensatory Stock Options Under Section 482.

**OMB Number:** 1545–1794.

**Regulation Project Number:** T.D. 9088.

**Abstract:** Internal Revenue Code section 482 provides guidance regarding the application of the rules of section 482 governing qualified cost sharing arrangements. These regulations provide guidance regarding the treatment of stock-based compensation for purposes of the rules governing qualified cost sharing arrangements and for purposes of the comparability factors to be considered under the comparable profits method.

**Current Actions:** There is no change in the paperwork burden previously approved by OMB.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Business or other for-profit.

**Estimated Number of Respondents:** 500.

**Estimated Time per Respondent:** 1 hour.

**Estimated Total Annual Burden Hours:** 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

**Comments are invited on:** (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2017.

**L. Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2017–21153 Filed 9–29–17; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Revenue Procedure 2003–84

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of information collection; request for comments.

**SUMMARY:** The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Revenue Procedure 2003–84, Optional election to make monthly 706(a) computations.

**DATES:** Written comments should be received on or before December 1, 2017 to be assured of consideration.

**ADDRESSES:** Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for additional information or copies of the regulation should be directed to Taquesha Cain, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at [Taquesha.R.Cain@irs.gov](mailto:Taquesha.R.Cain@irs.gov).

#### SUPPLEMENTARY INFORMATION:

**Title:** Optional election to make monthly 706(a) computations.

**OMB Number:** 1545–1768.

**Revenue Procedure Number:** Revenue Procedure 2003–84.

**Abstract:** This procedure allows certain partnerships that invest in tax-exempt obligations to make an election that enables the partners to take into account monthly the inclusions required under sections 702 and 707(c) of the Code and provides rules for partnership income tax reporting under

section 6031 for such partnerships. Rev. Proc. 2002–68 modified and superseded.

**Current Actions:** There are no changes being made to the revenue procedure at this time.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Business or other for-profit organizations.

**Estimated Number of Respondents:** 1,000.

**Estimated Time per Respondent:** 30 minutes.

**Estimated Total Annual Burden Hours:** 500.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

**Comments are invited on:** (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2017.

**L. Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2017–21152 Filed 9–29–17; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning carryover of passive activity losses and credits and at-risk losses to bankruptcy estates of individuals.

**DATES:** Written comments should be received on or before December 1, 2017 to be assured of consideration.

**ADDRESSES:** Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of this regulation should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Ave., NW., Washington, DC 20224, or through the internet at [Sara.L.Covington@irs.gov](mailto:Sara.L.Covington@irs.gov).

#### SUPPLEMENTARY INFORMATION:

**Title:** Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates for Individuals.

**OMB Number:** 1545–1375.

**Regulation Project Number:** T.D. 8537.

**Abstract:** These regulations relate to the application of carryover of passive activity losses and credits and at risk losses to the bankruptcy estates of individuals. The final regulations affect individual taxpayers who file bankruptcy petitions under chapter 7 or chapter 11 of title 11 of the United States Code and have passive activity losses and credits under section 469 or losses under section 465.

**Current Actions:** There are no changes being made to this existing regulation.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Individuals or households.

**Estimated Number of Respondents:** 500.

**Estimated Time per Respondent:** 12 Minutes.

**Estimated Total Annual Burden Hours:** 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2017.

**L. Brimmer,**  
Senior Tax Analyst.

[FR Doc. 2017-21145 Filed 9-29-17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form CT-1 and CT-1 X

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form CT-1, Employer's Annual Railroad Retirement Tax Return and

Form CT-1 X, Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund.

**DATES:** Written comments should be received on or before December 1, 2017 to be assured of consideration.

**ADDRESSES:** Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for additional information or copies of the regulation should be directed to Taquesha Cain, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at [Taquesha.R.Cain@irs.gov](mailto:Taquesha.R.Cain@irs.gov).

#### SUPPLEMENTARY INFORMATION:

**Title:** Employer's Annual Railroad Retirement Tax Return; Adjusted Employer's Annual Railroad Retirement Tax Return or Claim for Refund.

**OMB Number:** 1545-0001.

**Form Number:** Form CT-1 and Form CT-1 X.

**Abstract:** Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA) taxes. Form CT-1 is used for this purpose. The IRS uses the information to insure that the employer has paid the correct tax. Form CT-1X is used to correct previously filed Forms CT-1.

**Current Actions:** There is no change in the paperwork burden previously approved by OMB.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Businesses or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

**Estimated Number of Respondents:** 2,400.

**Estimated Time per Respondent:** 16 hours, 26 minutes.

**Estimated Total Annual Burden Hours:** 39,455.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 25, 2017.

**L. Brimmer,**  
Senior Tax Analyst.

[FR Doc. 2017-21149 Filed 9-29-17; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8904

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8904, Credit for Oil and Gas Production From Marginal Wells.

**DATES:** Written comments should be received on or before December 1, 2017 to be assured of consideration.

**ADDRESSES:** Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at [Martha.R.Brinson@irs.gov](mailto:Martha.R.Brinson@irs.gov).

#### SUPPLEMENTARY INFORMATION:

**Title:** Credit for Oil and Gas Production From Marginal Wells.

OMB Number: 1545–XXXX.

Form Number: 8904.

**Abstract:** Public Law 108–357, Title III, Subtitle C, section 341(a) has caused us to develop a credit for oil and gas production from marginal wells, which is reflected on Form 8904 and its instructions. Tax year 2017 will be the first year Form 8904 and its instructions will be released.

**Type of Review:** This is a new form.

**Affected Public:** Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and state, local or tribal governments.

**Estimated Number of Responses:** 20,000.

**Estimated Time per Respondent:** 2 hrs., 58 mins.

**Estimated Total Annual Burden Hours:** 59,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2017.

**L. Brimmer,**

Senior Tax Analyst.

[FR Doc. 2017–21141 Filed 9–29–17; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection: Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning dual consolidated loss regulations.

**DATES:** Written comments should be received on or before December 1, 2017 to be assured of consideration.

**ADDRESSES:** Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the regulation should be directed to Sara Covington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at [Sara.L.Covington@irs.gov](mailto:Sara.L.Covington@irs.gov).

#### SUPPLEMENTARY INFORMATION:

**Title:** Dual Consolidated Loss Regulations.

**OMB Number:** 1545–1946.

**Regulation Project Number:** T.D. 9315.

**Abstract:** Section 1503(d) denies the use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of a foreign country. These final regulations address various dual consolidated loss issues, including exceptions to the general prohibition against using a dual consolidated loss to reduce the taxable income of any other member of the affiliated group.

**Current Actions:** There is no change to this existing regulation.

**Type of Review:** Extension of a currently approved collection.

**Affected Public:** Business or other for-profit organizations.

**Estimated Number of Respondents:** 1,780.

**Estimated Time per Respondent:** 1 hour, 33 minutes.

**Estimated Total Annual Burden Hours:** 2,765.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2017.

**L. Brimmer,**

Senior Tax Analyst.

[FR Doc. 2017–21147 Filed 9–29–17; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Residence and Source Rules Involving U.S. Possessions and Other Conforming Changes (T.D. 9248)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information collection requirements

related residence rulings involving U.S. possessions.

**DATES:** Written comments should be received on or before December 1, 2017 to be assured of consideration.

**ADDRESSES:** Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for additional information or copies of the regulation should be directed to Taquesha Cain, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at [Taquesha.R.Cain@irs.gov](mailto:Taquesha.R.Cain@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Residence Rulings Involving U.S. Possessions.

*OMB Number:* 1545–1930.

*Regulation Project Number:* T.D. 9248.

*Abstract:* Internal Revenue Code section 937(a) and 881(b) provides guidance regarding the final regulations that provide rules for determining bona fide residency in the following U.S. possessions: American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households or businesses or other for-profit organizations.

*Estimated Number of Respondents:* 75,000.

*Estimated Time per Respondent:* 4 hours.

*Estimated Total Annual Burden Hours:* 300,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of

the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2017.

**L. Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2017–21154 Filed 9–29–17; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Forms 8027 and 8027–T

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the employer's annual information return of tip income and allocated tips and transmittal of employer's annual information return of tip income and allocated tips.

**DATES:** Written comments should be received on or before December 1, 2017 to be assured of consideration.

**ADDRESSES:** Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for additional information or copies of the regulation should be directed to Taquesha Cain, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at [Taquesha.R.Cain@irs.gov](mailto:Taquesha.R.Cain@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027), and Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027–T).

*OMB Number:* 1545–0714.

*Form Number:* Forms 8027 and 8027–T.

*Abstract:* To help IRS in its examinations of returns filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips reported by employees, and in certain cases, the employer must allocate tips to certain employees. Forms 8027 and 8027–T are used for this purpose.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

*Estimated Number of Respondents:* 52,050.

*Estimated Time per Respondent:* 9 hours, 23 minutes.

*Estimated Total Annual Burden Hours:* 488,161.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 25, 2017.

**L. Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2017–21148 Filed 9–29–17; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8878–A

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8878–A, IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.

**DATES:** Written comments should be received on or before December 1, 2017 to be assured of consideration.

**ADDRESSES:** Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at [Sara.L.Covington@irs.gov](mailto:Sara.L.Covington@irs.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* IRS e-file Electronic funds Withdrawal Authorization for Form 7004.

*OMB Number:* 1545–1927.

*Form Number:* 8878–A.

*Abstract:* Form 8878–A is used by a corporate officer or agent and an electronic return originator (ERO) to use a personal identification number (PIN) to authorize an electronic funds withdrawal for a tax payment made with a request to extend the filing due date for a corporate income tax return.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 140,000.

*Estimated Time per Respondent:* 3 hours, 37 minutes.

*Estimated Total Annual Burden Hours:* 505,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2017.

**L. Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2017–21146 Filed 9–29–17; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 6765

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The

IRS is soliciting comments concerning Form 6765, Credit for Increasing Research Activities.

**DATES:** Written comments should be received on or before December 1, 2017 to be assured of consideration.

**ADDRESSES:** Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to Sara Covington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at [Sara.L.Covington@irs.gov](mailto:Sara.L.Covington@irs.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Credit for Increasing Research Activities.

*OMB Number:* 1545–0619.

*Form Number:* 6765.

*Abstract:* Internal Revenue Code section 38 allows a credit against income tax (Determined under IRC section 41) for an increase in research activities in a trade or business. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 15,805.

*Estimated Time per Respondent:* 18 hours, 2 minutes.

*Estimated Total Annual Burden Hours:* 285,281.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval.

All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to

minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: September 26, 2017.

**L. Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2017-21144 Filed 9-29-17; 8:45 am]

**BILLING CODE 4830-01-P**

# Reader Aids

## Federal Register

Vol. 82, No. 189

Monday, October 2, 2017

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At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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**H.R. 3110/P.L. 115-61**

Financial Stability Oversight Council Insurance Member Continuity Act (Sept. 27, 2017; 131 Stat. 1158)

**Last List September 19, 2017**

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| DATE OF FR PUBLICATION | 15 DAYS AFTER PUBLICATION | 21 DAYS AFTER PUBLICATION | 30 DAYS AFTER PUBLICATION | 35 DAYS AFTER PUBLICATION | 45 DAYS AFTER PUBLICATION | 60 DAYS AFTER PUBLICATION | 90 DAYS AFTER PUBLICATION |
|------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|
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| October 17             | Nov 1                     | Nov 7                     | Nov 16                    | Nov 21                    | Dec 1                     | Dec 18                    | Jan 16                    |
| October 18             | Nov 2                     | Nov 8                     | Nov 17                    | Nov 22                    | Dec 4                     | Dec 18                    | Jan 16                    |
| October 19             | Nov 3                     | Nov 9                     | Nov 20                    | Nov 24                    | Dec 4                     | Dec 18                    | Jan 17                    |
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