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Editorial Note: The print edition of the **Federal Register** for Monday, October 2, 2017, contained a typographical error on the cover and spine. The volume number listed on the cover and spine read ''83,'' but should have read ''82.''

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

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DEPARTMENT OF AGRICULTURE

7 CFR Part 15a

RIN 0503–AA60

Education Programs or Activities Receiving or Benefitting From Federal Financial Assistance

AGENCY: Office of the Assistant Secretary for Civil Rights, USDA.

ACTION: Final rule.

SUMMARY: This rule updates the regulations required for the enforcement of Title IX of the Education Amendments of 1972, as amended (commonly referred to as ''Title IX'') for financial assistance from the Department of Agriculture. Title IX prohibits discrimination on the basis of sex in education programs or activities that receive Federal financial assistance. The regulation provides guidance to recipients of Federal financial assistance who administer education programs or activities. The changes made by this rule will promote consistency in the enforcement of Title IX for USDA financial assistance recipients.

DATES: *Effective:* November 6, 2017.

FOR FURTHER INFORMATION CONTACT: David King, telephone (202) 720–3808.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to update the regulations in 7 CFR part 15a for the enforcement of Title IX (20 U.S.C. 1681–1683, 1685–1688) as it applies to educational programs and activities that receive Federal financial assistance from USDA.

On April 11, 1979, USDA published a final rule (44 FR 21610) to implement USDA's Title IX regulations, which prohibit discrimination on the basis of sex in educational programs or activities operated by recipients of Federal financial assistance.

On August 30, 2000, 20 Federal departments and agencies published a final rule (65 FR 52858) to provide for the enforcement of Title IX by participating Federal agencies that had not previously promulgated Title IX implementing regulations (referred to as the ''common rule''). The Department of Justice coordinated development of the Title IX common rule, consistent with its responsibility under Executive Order 12250, to ensure the consistent and effective implementation of Title IX and other civil rights laws. USDA, as one of the Federal agencies that had already promulgated Title IX regulations, did not publish new rules to reflect the common rulemaking.

Upon further consideration, USDA decided to amend its Title IX regulations to adopt the language of the common rule. USDA's Title IX regulations have not been updated since 1979 and do not reflect intervening developments, including certain Supreme Court decisions, revisions by the Department of Education and the Department of Justice (''DOJ''), the Civil Rights Restoration Act of 1987 (Pub. L. 100–259), and various Executive Orders. By harmonizing the provisions of 7 CFR part 15a with the common rule, USDA brings its regulations up-to-date, complies with Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' dated February 24, 2017, follows current guidance from DOJ, and makes it easier for recipients of USDA financial assistance to understand and comply with Title IX requirements. The revisions to 7 CFR part 15a merely conform USDA's regulations to the Title IX common rule adopted by other federal agencies and reflect changes in the law since USDA published its Title IX regulations in 1979. This rule imposes no new substantive requirements on recipients of USDA financial assistance.

As shown in the following ''cross-walk'' table, some of the provisions of new part 15a (renumbered to correspond to the common rule) appear in different order than in the existing regulations in part 15a:

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Public Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involves benefits

and is therefore being published as a final rule without the prior opportunity for comments.

Executive Orders 12866, 13563, 13771, and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people. In line with the requirement repeal, replace, or modify regulations, this rule is modifying a regulation for consistency with other related federal regulations and to update the requirements.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule. Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. This rule does not rise to the level required to comply with Executive Order 13771; it is also updating an existing regulation, therefore it is not a new regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because, as noted above, it is exempt from notice and comment rulemaking under 5 U.S.C. 553 and therefore, USDA is not required by any law to publish a proposed rule for public comment for this rulemaking.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed federal financial assistance and direct federal development. This rule neither provides federal financial assistance nor direct federal development. It does not provide either grants or cooperative agreements. Therefore, this rule is not subject to Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have a retroactive effect.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

USDA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, USDA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where requested.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. This rule is not a major rule under SBREFA. Therefore, USDA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, the rule is effective when published in the **Federal Register**, as discussed above.

E-Government Act Compliance

USDA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 15a

Education, Sex discrimination, Youth organizations.

■ For the reasons discussed above, 7 CFR part 15a is revised to read as follows:

PART 15a—EDUCATION PROGRAMS OR ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

Authority: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688; 42 U.S.C. 7101 *et seq.;* and 50 U.S.C. 2401 *et seq.*

Subpart A—Introduction

§ 15a.100 Purpose.

The purpose of this part is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part.

§ 15a.105 Definitions.

As used in this part, the term:

Administratively separate unit means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

Designated agency official means the Secretary of Agriculture or any officer or employees of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act for the Secretary under the regulations in this part.

Educational institution means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of professional education means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized

accrediting agency recognized by the Secretary of Education.

Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Student means a person who has gained admission.

Title IX means Title IX of the Education Amendments of 1972, Public Law 92–318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681–1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93–568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94–482, 90 Stat. 2234, and by Section 3 of Public Law 100–259, 102 Stat. 28, 28–29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

Transition plan means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

§ 15a.110 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in this part shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and nonacademic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§ 15a.115 Assurance required.

(a) *General.* Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 15a.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

§ 15a.120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of

the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ 15a.205 through 15a.235(a).

§ 15a.125 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

§ 15a.130 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§ 15a.135 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part.

§ 15a.140 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and this part, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ 15a.300 through 15a.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and this part to such recipient may be referred to the employee designated pursuant to § 15a.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the date this part first applies to such recipient, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

Subpart B—Coverage

§ 15a.200 Application.

Except as provided in §§ 15a.205 through 15a.235(a), this part applies to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

§ 15a.205 Educational institutions and other entities controlled by religious organizations.

(a) *Exemption.* This part does not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of this part that conflict with a specific tenet of the religious organization.

§ 15a.210 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

§ 15a.215 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities that are

exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ 15a.220 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, §§ 15a.225 and 15a.230, and §§ 15a.300 through 15a.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§ 15a.300 through 15a.310.* Except as provided in paragraphs (d) and (e) of this section, §§ 15a.300 through 15a.310 apply to each recipient. A recipient to which §§ 15a.300 through 15a.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 15a.300 through 15a.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ 15a.300 through 15a.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Sections 15a.300 through 15a.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

§ 15a.225 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which §§ 15a.300 through 15a.310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 15a.300 through 15a.310.

§ 15a.230 Transition plans.

(a) *Submission of plans.* An institution to which § 15a.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 15a.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§ 15a.300 through 15a.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 15a.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

§ 15a.235 Statutory amendments.

(a) This section, which applies to all provisions of this part, addresses statutory amendments to Title IX.

(b) This part shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) *Program or activity or program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such

assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a ''program or activity'' subject to this part if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in this part shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 15a.300 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ 15a.300 through 15a.310 apply, except as provided in §§ 15a.225 and 15a.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 15a.300 through 15a.310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 15a.300 through 15a.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to § 15a.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is ''Miss'' or ''Mrs.'' A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

§ 15a.305 Preference in admission.

A recipient to which §§ 15a.300 through 15a.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ 15a.300 through 15a.310.

§ 15a.310 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§ 15a.300 through 15a.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 15a.110(a), and may choose to undertake such efforts as affirmative action pursuant to § 15a.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§ 15a.300 through 15a.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§ 15a.300 through 15a.310.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 15a.400 Education programs or activities.

(a) *General.* Except as provided elsewhere in this part, no person shall,

on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections 15a.400 through 15a.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ 15a.300 through 15a.310 do not apply, or an entity, not a recipient, to which §§ 15a.300 through 15a.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ 15a.400 through 15a.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for instate fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; Provided, that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aids, benefits or services not provided by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§ 15a.405 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

§ 15a.410 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

§ 15a.415 Access to course offerings.

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of these regulations. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of these regulations.

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality

may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

§ 15a.420 Access to schools operated by LEAs.

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§ 15a.425 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ 15a.430 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; Provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § 15a.450.

§ 15a.435 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§ 15a.500 through 15a.550.

§ 15a.440 Health and insurance benefits and services.

Subject to § 15a.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ 15a.500 through 15a.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

§ 15a.445 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a

physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) Subject to § 15a.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

§ 15a.450 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice, and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of these regulations. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of these regulations.

§ 15a.455 Textbooks and curricular material.

Nothing in this part shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 15a.500 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ 15a.500 through 15a.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of §§ 15a.500 through 15a.550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth,

false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ 15a.505 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§ 15a.510 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ 15a.500 through 15a.550.

§ 15a.515 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

§ 15a.520 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § 15a.550.

§ 15a.525 Fringe benefits.

(a) ''*Fringe benefits*'' *defined.* For purposes of this part, fringe benefits means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 15a.515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§ 15a.530 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* Subject to § 15a.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§ 15a.535 Effect of state or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with §§ 15a.500 through 15a.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§ 15a.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§ 15a.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is ''Miss'' or ''Mrs.''

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

§ 15a.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ 15a.500 through 15a.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Other Provisions

§ 15a.605 Enforcement procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) are hereby adopted and applied to this part. These procedures may be found at 7 CFR 15.5–15.11 and 15.60–15.143.

Dated: September 25, 2017.

Sonny Perdue,

Secretary.

[FR Doc. 2017–20869 Filed 10–5–17; 8:45 am]

BILLING CODE 3410–9R–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[NRC–2011–0162]

RIN 3150–AJ17

Prompt Remediation of Residual Radioactivity During Operation

AGENCY: Nuclear Regulatory Commission.

ACTION: Discontinuation of rulemaking activity.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is discontinuing a rulemaking activity that would have required licensees to remediate residual radioactivity resulting from licensed activities during facility operations, rather than at license termination. The purpose of this action is to inform members of the public that this rulemaking activity is being discontinued and to provide a brief discussion of the NRC's decision to discontinue it. This rulemaking activity will no longer be reported in the NRC's portion of the Unified Agenda of Regulatory and Deregulatory Actions (the Unified Agenda).

DATES: This action is effective October 6, 2017.

ADDRESSES: Please refer to Docket ID NRC–2011–0162 when contacting the NRC about the availability of information regarding this action. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0162. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Robert D. MacDougall, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5175; email: *Robert.MacDougall@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

This action is the culmination of a process of evaluating operating experience and interacting with the public since 2007 to determine whether the NRC should require licensees to remediate, during facility operations, releases of residual radioactivity into the surface and subsurface of their facility sites. Such remediation during operations has come to be known as ''prompt'' remediation. In order to permit a site to be released for unrestricted use, licensees are currently required to remediate, before license termination, all residual radioactivity at their facility sites to levels that provide reasonable assurance that no member of the public will receive a dose from the decommissioned facility greater than 25 millirem (mrem) per year.

As a result of its evaluations and stakeholder interactions, the NRC staff recommended, and the Commission decided, to discontinue further work on a prompt remediation rulemaking. A discussion of this decision is provided in Section II of this document.

II. Discussion

The Commission first directed the staff to study the potential need for a prompt remediation rulemaking when the Commission approved the proposed decommissioning planning rule (DPR) in 2007. In its staff requirements memorandum (SRM) on that proposed rule (ADAMS Accession No. ML073440549), the Commission directed the staff to ''make further improvements to the decommissioning planning process by addressing the remediation of residual radioactivity during the operational phase with the objective of avoiding complex decommissioning challenges that can lead to legacy sites.'' In its subsequent **Federal Register** document (FRN) for the proposed DPR, published January 22, 2008, the Commission defined ''legacy site'' as ''a facility that is in decommissioning with complex issues and an owner who cannot complete the decommissioning work for technical or financial reasons'' (73 FR 3813).

Such a site could not be released for unrestricted use when the license is terminated, and would therefore require an institution, usually a government agency, to maintain and restrict access to the site to keep doses to members of the public below the individual site-specific limit approved by the NRC.

Under § 20.1402 of title 10 of the *Code of Federal Regulations* (10 CFR), the

maximum dose limit for release of a site for unrestricted use by the public is 25 mrem per year. However, if the site is a legacy site requiring institutional controls on access, the Commission, assuming the eventual loss of such controls, may approve a higher limit up to 500 mrem per year under 10 CFR 20.1403. It may also approve alternative release criteria under 10 CFR 20.1404. In either case, the licensee would have to demonstrate, among other things, that doses would be as low as reasonably achievable (ALARA) and the concerns of affected individuals and institutions in the community had been appropriately addressed. To minimize the future possibility of these alternatives to the unrestricted release of decommissioned sites, the objective of the proposed DPR was to ''improve decommissioning planning and thereby reduce the likelihood that any current operating facility will become a legacy site'' (73 FR 3812; January 22, 2008).

The final DPR, published on June 17, 2011 (76 FR 35512), retained that objective, and took effect on December 17, 2012. The DPR requires licensees to conduct their operations to minimize the introduction of residual radioactivity into the site, which includes the site's subsurface soil and groundwater. Licensees may also be required to perform site surveys to determine whether residual radioactivity is present in subsurface areas, and to keep records of these surveys with records important for decommissioning. Among other things, the rule requires licensees to report additional details in their decommissioning cost estimates (76 FR 35512; June 17, 2011).

The DPR does not, however, mandate that licensees remediate during operations. In response to a comment on the lack of such a requirement, the Commission noted in its FRN for the final rule that it ''allows a licensee who detects subsurface contamination either to conduct immediate remediation or to plan for and provide funds in the form of financial assurance to conduct remediation at a later time, including at the time of decommissioning. Thus, this final rule creates a potential incentive for immediate remediation instead of an increased financial assurance obligation'' (76 FR 35532; June 17, 2011).

In parallel with the development of the final DPR, and in accordance with the Commission's 2007 directive to consider a prompt remediation requirement, the NRC staff developed a draft regulatory basis for a proposed rule to address prompt remediation (ADAMS Accession No. ML111580353). An FRN published on July 18, 2011 (76 FR 42074), announced the NRC's ''Consideration of Rulemaking To Address Prompt Remediation of Residual Radioactivity During Operations.''

The NRC staff held a public meeting and webinar on July 25, 2011, to discuss prompt remediation, and obtained and evaluated additional stakeholder comments for a revised draft regulatory basis for potential rulemaking (ADAMS Accession No. ML120190685). Subsequently, in SRM–SECY–12–0046, ''Options for Revising the Regulatory Approach to Groundwater Protection'' (ADAMS Accession No. ML121450704), the Commission directed the staff on May 24, 2012, to seek additional stakeholder comments on the draft regulatory basis for a proposed prompt remediation rule. The Commission also directed the staff to evaluate the pros and cons of moving forward with a proposed prompt remediation rulemaking.

The NRC staff held a public meeting and webinar on June 4, 2013, to obtain stakeholder comments on the ongoing prompt remediation issue. The staff then evaluated those comments and included the results in SECY–13–0108, ''Staff Recommendations for Addressing Remediation of Residual Radioactivity During Operations'' (ADAMS Accession No. ML13217A230). In SRM–SECY–13–0108 (ADAMS Accession No. ML13354B759), the Commission on December 20, 2013, approved the NRC staff's recommendation to collect 2 years of additional data on the implementation of the DPR. The Commission also directed that the staff, after collecting and evaluating the data and holding a public meeting with stakeholders, provide the Commission a paper ''with the staff's recommendation for addressing remediation of residual radioactivity at licensed facilities during the operational phase of the facility.''

To evaluate the need for and potential benefits of additional rulemaking on prompt remediation, the NRC staff analyzed whether the manner of licensee compliance with the DPR has been adequate to prevent future legacy sites (see SECY–16–0121, ''Staff Recommendations For Rulemaking To Address Remediation of Residual Radioactivity During Operation,'' October 16, 2016 (ADAMS Accession No. ML16235A298)). The staff evaluated: (1) NRC inspection results; (2) licensee event reports and radiological effluent monitoring reports; (3) the financial assurance mechanisms available to support decommissioning at different types of facilities; (4) the results of the Nuclear Energy Institute (NEI) 07–07, ''Industry Groundwater Protection Initiative'' (ADAMS Accession No. ML072610036) and associated groundwater contamination evaluations; (5) guidance promulgated by the NRC and industry groups such as NEI and the Electric Power Research Institute (EPRI); and (6) stakeholder feedback from a July 11, 2016, public webinar and other forums.

Based on these information sources, the NRC staff concluded in SECY–16–0121 that:

- Existing dose limits codified in the NRC's regulations provide adequate protection of public health and safety during operation, and an additional rule requiring prompt remediation would provide limited additional benefit.
- The current DPR requires early identification of residual radioactivity that, if allowed to spread, could prevent a site from being released for unrestricted use at license termination. The DPR also requires timely adjustments to decommissioning financial instruments to ensure that adequate funding will be available after facility shutdown to remediate any such residual radioactivity to comply with the criteria for license termination in 10 CFR part 20, appendix E. These requirements mitigate the potential that residual contamination unaccounted for in a licensee's funding for decommissioning would lead to a future legacy site.
- In some circumstances, mandated remediation during operation could adversely affect operational safety, as certain locations may be safely accessible only after operations have ceased or when operating conditions permit. This would be the case, for example, if residual radioactivity were suspected underneath a building within which a licensee was using or storing radioactive materials.
- Groundwater resources are protected from abnormal releases by effective groundwater monitoring programs, as well as industry initiatives where appropriate, to identify significant residual radioactivity early in the operating life of the facility. Examples of such initiatives are the NEI 07–07 effort and supporting EPRI guidance for evaluating potential groundwater contamination.
- Licensees are effectively complying with the DPR. The current regulations are sufficient to ensure that when a facility ceases operation, site characterization will have resulted in the appropriate identification of all significant residual subsurface radioactivity, and adequate financial resources will be available to complete decommissioning for release of the site

for unrestricted use at the time of license termination. Two bases for this confidence are that no new legacy sites have been identified since the NRC's financial assurance regulations were promulgated in 1988, and no sites have had to make adjustments to their decommissioning funds due to the identification of significant residual radioactivity since implementation of the DPR.

The staff also found in SECY–16–0121 that residual radioactivity detected to date has been limited mostly to onsite areas, and there has not been a significant impact on public health and safety. Under current regulations, this is unlikely to change. In addition to complying with applicable dose standards, for example, licensees also must comply with the requirement in 10 CFR 20.1101(b) to ''use, to the extent practical, procedures and engineering controls . . . to achieve . . . doses to members of the public as low as reasonably achievable (ALARA).'' By requiring public doses to be ALARA, existing NRC regulations provide ample assurance that the need for a prompt remediation rule is unlikely to grow with time.

Based on these considerations, earlier assessments, and its conclusions from the 2 additional years of operating experience, the NRC staff in SECY–16–0121 recommended that further work on a prompt remediation rule be discontinued. On December 21, 2016, in SRM–SECY–16–0121 (ADAMS Accession No. ML16356A583), the Commission accepted the staff's recommendation.

From the staff's evaluation of how licensees are complying with the DPR and other NRC regulations limiting doses to members of the public, the Commission has determined that licensees are operating their facilities to minimize leaks and spills, monitor for residual radioactivity, adjust decommissioning funding to account for residual surface and subsurface radioactivity, and maintain doses to the public within regulatory limits, including ALARA requirements. Compliance with these regulations protects public health and safety and significantly reduces the potential for additional legacy sites.

III. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./ **Federal Register** citation
Decommissioning Planning; Proposed Rule (January 22, 2008)	73 FR 3812
Decommissioning Planning; Final Rule (June 17, 2011)	76 FR 35512
SRM—SECY–07–0177—Proposed Rule: Decommissioning Planning	ML073440549
Draft Proposed Technical Basis For Prompt Remediation, Rev. 4	ML111580353
FEDERAL REGISTER document ''Consideration of Rulemaking to Address Prompt Remediation of Residual Radioactivity During Operations.'' (July 18, 2011).	76 FR 42074
Draft Technical Basis For Prompt Remediation, Rev. 3	ML120190685
SRM–SECY–12–0046, ''Options for Revising the Regulatory Approach to Groundwater Protection''	ML121450704
SECY–13–0108, ''Staff Recommendations for Addressing Remediation of Residual Radioactivity During Operations''	ML13217A230
SRM–SECY–13–0108 ''Staff Recommendations For Addressing Remediation Of Residual Radioactivity During Operations''.	ML13354B759
Nuclear Energy Institute, NEI 07–07, ''Industry Groundwater Protection Initiative''	ML072610036
SECY–16–0121, ''Staff Recommendations For Rulemaking To Address Remediation Of Residual Radioactivity During Operation''.	ML16235A298
SRM–SECY–16–0121, ''Staff Recommendations For Rulemaking To Address Remediation Of Residual Radioactivity During Operation''.	ML16356A583

IV. Conclusion

The NRC is no longer pursuing revisions to its regulations in 10 CFR part 20 for the reasons discussed in this document. In the next edition of the Unified Agenda, the NRC will update the entry for this rulemaking activity and reference this document to indicate that it is no longer being pursued. This rulemaking activity will appear in the ''Completed Actions'' section of that edition of the Unified Agenda, but will not appear in future editions. If the NRC decides to pursue similar or related rulemaking activities in the future, it will inform the public through a new rulemaking entry in the Unified Agenda.

Dated at Rockville, Maryland, this 2nd day of October 2017.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2017–21546 Filed 10–5–17; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. OP–1572]

Policy on Payment System Risk

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has revised part II of the Federal Reserve Policy on Payment System Risk (PSR policy) related to the transaction posting times used for measuring balances intraday in institutions' accounts at the Federal Reserve Banks (Reserve Banks) to conform to amendments to regulations governing the use of the Automated Clearing House (ACH) Network by Federal agencies announced by the Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service). Specifically, the amended posting rules conform to the decision of the Fiscal Service to allow Federal agencies to originate and receive same-day entries beginning September 15, 2017.

DATES: This policy revision is applicable beginning on September 15, 2017.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Walker, Assistant Director (202–721–4559), Jason Hinkle, Manager, Financial Risk Management (202–912–7805), or Ian C.B. Spear, Senior Financial Services Analyst (202–452–3959), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for

the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Board's PSR policy establishes the procedures for measuring balances intraday in institutions' accounts at the Reserve Banks by setting forth the times at which credits and debits for various types of transactions are posted to those accounts (''the posting rules'').[1] The application of these posting rules determines an institution's intraday account balance and whether it has incurred a negative balance (daylight overdraft).

On September 23, 2015, the Board approved enhancements to the Reserve Banks' FedACH® SameDay Service (FedACH SameDay Service) in light of amendments to NACHA—The Electronic Payments Association's Operating Rules and Guidelines.[2] The NACHA amendments, as incorporated into Operating Circular 4, become effective in three phases, beginning with same-day credits in September 2016, same-day debits in September 2017, and faster funds availability in March 2018. Next-day settlement remains available.

The Board is revising the PSR policy's posting rules for same-day ACH transactions to conform to amendments to 31 CFR part 210 (part 210) announced on September 11, 2017 by Fiscal Service.[3] Specifically, the amended posting rules conform to the decision of the Fiscal Service to allow Federal agencies to originate and receive same-day entries beginning September 15, 2017.[4]

Policy on Payment System Risk

The Federal Reserve Policy on Payment System Risk, section II.A, under the heading ''Procedures for Measuring Daylight Overdrafts'' and the subheadings ''Post at 8:30 a.m. eastern time,'' ''Post by 1:00 p.m. eastern time,'' ''Post at 5:00 p.m. eastern time,'' and ''Post at 5:30 p.m. eastern time,'' is amended as follows:

Post at 8:30 a.m. eastern time:

+/− Term deposit maturities and accrued interest

+/− Government and commercial ACH transactions, including return items [5]

+/− Commercial check transactions, including returned checks [6]

+ Treasury checks, postal money orders, local Federal Reserve Bank checks, and savings bond redemptions in separately sorted deposits; these items must be deposited by the latest applicable deposit deadline preceding the posting time

+ Advance-notice Treasury investments

− Penalty assessments for tax payments from the Treasury Investment Program (TIP).[7]

Post by 1:00 p.m. eastern time:

+/− Commercial check transactions, including returned checks

+/− Government and commercial FedACH SameDay Service transactions, including return items [8]

+ Same-day Treasury investments.

Post at 5:00 p.m. eastern time:

+/− Government and commercial FedACH SameDay Service transactions, including return items [9]

+ Treasury checks, postal money orders, and savings bond redemptions in separately sorted deposits; these items must be deposited by the latest applicable deposit deadline preceding the posting time

+ Local Federal Reserve Bank checks; these items must be presented before 3:00 p.m. eastern time

Post at 5:30 p.m. eastern time:

+/− Government and commercial FedACH SameDay Service return transactions [10]

+/− Commercial check transactions, including returned checks

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Reserve Bank Operations and Payment Systems under delegated authority, October 3, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–21602 Filed 10–5–17; 8:45 am]

BILLING CODE P

[1] The Board's PSR policy is available at *https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.*

[2] 80 FR 58248 (Sep. 28, 2015). NACHA, whose membership consists of insured financial institutions and regional payment associations, establishes network-wide ACH rules through its Operating Rules and Guidelines. As an ACH operator, the Reserve Banks, through Operating Circular 4, incorporate NACHA's Operating Rules and Guidelines as rules that govern clearing and settlement of commercial ACH items by the Reserve Banks, except for those provisions specifically excluded in the Operating Circular.

[3] The Fiscal Service amended part 210 to address changes to the NACHA Operating Rules, including NACHA's same-day amendments. *See* 82 FR 42597 (Sep. 11, 2017). Part 210 governs the use of ACH by Federal agencies and incorporates the NACHA Operating Rules, with certain exceptions.

[4] 31 CFR 210.2(d)(7) (as amended Sept. 11, 2017).

[5] With the exception of paper returns and paper notifications of change of prior-dated items that only post at 5:00 p.m.; and paper returns of same-day forward items that only post at 5:30 p.m.

Institutions that are monitored in real time must fund the total amount of their commercial ACH credit originations in order for the transactions to be processed. If the Federal Reserve receives commercial ACH credit transactions from institutions monitored in real time after the scheduled close of the Fedwire Funds Service, these transactions will be processed at 12:30 a.m. the next business day, or by the ACH deposit deadline, whichever is earlier. The Account Balance Monitoring System provides intraday account information to the Reserve Banks and institutions and is used primarily to give authorized Reserve Bank personnel a mechanism to control and monitor account activity for selected institutions. For more information on ACH transaction processing, refer to the ACH Settlement Day Finality Guide available through the Federal Reserve Financial Services Web site at *http://www.frbservices.org.*

[6] For the three commercial check transaction posting times, the Reserve Banks will post credits and debits to institutions' accounts for checks deposited and presented, respectively, at least 30 minutes before the posting time.

[7] The Reserve Banks will identify and notify institutions with Treasury-authorized penalties on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will identify and notify institutions with Treasury-authorized penalties on the following business day. Penalties will then be posted on the business day following notification.

[8] With the exception of paper returns and paper notifications of change (NOCs) of prior-dated items that only post at 5:00 p.m.; paper returns of same-day forward items that only post at 5:30 p.m.; and FedLine Web returns and FedLine Web NOCs that only post at 8:30 a.m. and 5:00 p.m., depending on when the item is received by Reserve Banks.

[9] With the exception of paper returns of same-day forward items that only post at 5:30 p.m.

[10] With the exception of paper returns and paper notifications of change (NOCs) of prior-dated items that only post at 5:00 p.m.; and FedLine Web returns and FedLine Web NOCs that only post at 8:30 a.m. and 5:00 p.m., depending on when the item is received by Reserve Banks.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0254; Product Identifier 2017–NE–10–AD; Amendment 39–19066; AD 2017–20–09]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all General Electric Company (GE) CF34–8E model turbofan engines. This AD was prompted by a report that using a certain repair procedure for the fan outlet guide vane (OGV) frame could alter the strength capability of the fan OGV frame. This AD requires replacement of all fan OGV frames

repaired using this procedure. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 13, 2017.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: 513–552–3272; fax: 513–552–3329; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 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–2017–0254.

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–2017–0254; 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 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: David Bethka, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7129; fax: 781–238–7199; email: *david.bethka@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 all GE CF34–8E model turbofan engines. The NPRM published in the **Federal Register** on June 8, 2017 (82 FR 26615). The NPRM was prompted by a report that using a certain repair procedure for the fan OGV frame could alter the strength capability of the fan OGV frame because the repair procedure included an improper heat cycle. The NPRM proposed to require replacement of all fan OGV frames repaired using this procedure. This condition, if not corrected, could result in failure of the fan OGV frame, engine separation, and loss of the airplane.

Comments

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

Support for the NPRM

The Air Line Pilots Association supports the NPRM.

Request To Change Applicability

Horizon Air requested we include a list of fan OGV frame affected serial numbers (S/Ns) in this AD. J-Air requested that this AD include GE Service Bulletin (SB) CF34–8E–AL S/B 72–0183, Revision 3, dated March 7, 2017, for a list of affected OGV frame S/Ns known to GE. Further, the two commenters explained that operators are not necessarily aware of which repairs have been performed. The changes were requested to take the burden off the operator to determine AD applicability.

We partially agree. We disagree that SB CF34–8E–AL S/B 72–0183 provides a list of all affected OGV frame S/Ns. The list of known affected part S/Ns is based on the best available data, but is not comprehensive. It may be possible that some OGV frames were repaired, but are not known to GE and are not included in GE SB CF34–8E–AL S/B 72–0183. Operators are responsible for checking engine records to determine AD applicability.

We agree to unburden operators to the maximum extent possible. In the interest of aiding operators to determine affected part S/Ns, we included GE SB CF34–8E–AL S/B 72–0183 in the Related Service Information section in the preamble of this final rule, with a note that GE SB CF34–8E–AL S/B 72–0183 does not include a comprehensive list of all affected parts. GE SB CF34–8E–AL S/B 72–0183 includes a list of OGV frame S/Ns known to GE that have been repaired to GEK 112031 72–00–23, REPAIR 006.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the change described previously. 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 final rule.

Related Service Information

We reviewed GE CF34–8E Engine Manual, GEK 112031, 72–00–23, REPAIR 006. The repair describes procedures for applying a dry-film lubricant to the fan OGV frame with heat curing.

We also reviewed GE SB CF34–8E–AL S/B 72–0183, Revision 3, dated March 7, 2017. The SB provides instructions to replace the fan OGV frames repaired as specified in GE CF34–8E Engine Manual, GEK 112031, 72–00–23, REPAIR 006. However, the SB does not provide a comprehensive list of affected parts. The SB provides a list of OGV frame S/Ns known to GE that have been repaired to GEK 112031 72–00–23 REPAIR 006.

Costs of Compliance

We estimate that this AD affects 42 engines installed on 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
Fan OGV frame part—annual, prorated cost	0 work-hour × $85 per hour = $0.00	$12,300	$12,300	$516,600

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

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

Regulatory Findings

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 adding the following new airworthiness directive (AD):

2017–20–09 General Electric Company: Amendment 39–19066; Docket No. FAA–2017–0254; Product Identifier 2017–NE–10–AD.

(a) Effective Date

This AD is effective November 13, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) CF34–8E2; CF34–8E2A1; CF34–8E5; CF34–8E5A1; CF34–8E5A2; CF34–8E6; and CF34–8E6A1 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC), 7270, Turbine Engine Bypass Section.

(e) Unsafe Condition

This AD was prompted by a report that using a certain repair procedure for the fan outlet guide vane (OGV) frame could alter the strength capability of the fan OGV frame. We are issuing this AD to prevent failure of the fan OGV frame, engine separation, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For engines with a fan OGV frame installed that was repaired using GE CF34–8E Engine Manual, GEK 112031, 72–00–23, REPAIR 006:

(i) If the fan OGV frame has 24,900 cycles since new (CSN) or more on the effective date of this AD, remove the OGV frame from service within 100 cycles after the effective date of this AD.

(ii) If the OGV frame has less than 24,900 CSN on the effective date of this AD, remove the fan OGV frame from service at the next shop visit after the effective date of this AD, or before exceeding 25,000 CSN, whichever occurs earlier.

(2) After the effective date of this AD, do not install a fan OGV frame that was repaired using GE CF34–8E Engine Manual, GEK 112031, 72–00–23, REPAIR 006.

(h) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. You may email your request to: *ANE–AD–AMOC@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.

(j) Related Information

(1) For more information about this AD, contact David Bethka, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7129; fax: 781–238–7199; email: *david.bethka@faa.gov.*

(2) For General Electric service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: 513–552–3272; fax: 513–552–3329; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on September 28, 2017.

Robert J. Ganley,

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

[FR Doc. 2017–21345 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

CFR Correction

In Title 26 of the Code of Federal Regulations, Part 26, §§ 1.401 to 1.409, revised as of April 1, 2017, on page 235, in § 1.401(a)(9)–6, at the end of paragraph (d)(3)(i), insert the words ''as of the date of purchase''.

[FR Doc. 2017–21742 Filed 10–5–17; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

CFR Correction

In Title 26 of the Code of Federal Regulations, § 1.1551 to end of part 1, revised as of April 1, 2017, on page 331, in § 1.6045–4, in paragraph (m), after the designation (1), the designation (i) is added.

[FR Doc. 2017–21741 Filed 10–5–17; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2017–0909]

Special Local Regulations; Marine Events Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Swim the Loop and Motts Channel Sprint on October 7, 2017, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for this event in Wrightsville Beach, NC. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 100.501 will be enforced for the Swim the Loop and Motts Channel Sprint regulated area listed in item d.1 in the Table to § 100.501 from 9:30 a.m. to noon on October 7, 2017.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: 910–772–2221, email: *Matthew.I.Tyson@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.501 for the Swim the Loop and Motts Channel Sprint regulated area from 9:30 a.m. to noon on October 7, 2017. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Fifth Coast Guard District, § 100.501, specifies the location of the regulated area for the Swim the Loop and Motts Channel Sprint which encompasses portions of Motts Channel, Banks Channel, Lee's Cut, and the Atlantic Intracoastal Waterway. During the enforcement periods, as reflected in § 100.100(c), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

This notice of enforcement is issued under authority of § 100.100(f) and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via a Broadcast Notice to Mariners.

Dated: October 2, 2017.

Bion B. Stewart,

Captain, U.S. Coast Guard, Captain of the Port, North Carolina.

[FR Doc. 2017–21570 Filed 10–5–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2017–0515; FRL–9968–80—Region 7]

Approval of Missouri Air Quality Implementation Plans; Infrastructure SIP Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) revision from the State of Missouri for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). Section 110 of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This direct final rule will be effective December 5, 2017, without further notice, unless EPA receives adverse comment by November 6, 2017. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2017–0515, to *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7016, or by email at *casburn.tracey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?

EPA is approving the revision as meeting the submittal requirement of section 110(a)(1). EPA is approving elements of the infrastructure SIP submission from the State of Missouri received on July 08, 2013. EPA is approving the following elements of section 110(a)(2): (A), (B), (C), (D)(i)(II)—prevention of significant deterioration of

air quality (prong 3), (D)(ii), (E) through (H), and (J) through (M). EPA is not acting on the elements of section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment (prong 1), interfering with maintenance of the NAAQs (prong 2) or section 110(a)(2)(I). EPA intends to act on section 110(a)(2)(D)(i)(II)—protection of visibility (prong 4) in a separate action.

A Technical Support Document (TSD) is included as part of the docket to discuss the details of this action, including analysis of how the SIP meets the applicable 110 requirements for infrastructure SIPs.

II. Have the requirements for approval of a SIP revision been met?

The state's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The state held a public comment period from The MDNR held a public hearing and comment period from April 30, 2013, to June 6, 2013. EPA provided comments on May 23, 2013 and were the only commenters. A public hearing was held on May 30, 2013. The submission satisfied the completeness criteria of 40 CFR part 51, appendix V for all elements except 110(a)(2)(D)(i)(I)—prongs 1 and 2. As explained in more detail in the TSD, which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

EPA is approving elements of the July 8, 2013, infrastructure SIP submission from the State of Missouri, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2010 SO_2 NAAQS. As stated above, EPA is approving the revision as meeting the submittal requirement of section 110(a)(1) and approving the following elements of section 110(a)(2): (A), (B), (C), (D)(i)(II)—prevention of significant deterioration of air quality (prong 3), (D)(ii), (E) through (H), and (J) through (M). EPA is not acting on section 110(a)(2)(I). EPA intends to act on section 110(a)(2)(D)(i)(II)—protection of visibility (prong 4) in a separate action.

EPA is not acting on the elements of section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment (prong 1), interfering with maintenance of the NAAQs (prong 2) because those elements were not addressed in the SIP revision submittal.

EPA is not taking action on section 110(a)(2)(D)(I) as the agency does not expect infrastructure SIP revisions to address the element. Section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. EPA does not expect infrastructure SIP submissions to address element (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. EPA will take action on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

IV. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 21, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA is amending 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. Amend § 52.1320 by adding paragraph (e)(65) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(65) Sections 110(a)(1) and 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide NAAQS.	Statewide	7/8/2013	10/6/2017, [Insert **Federal Register** citation].	This action approves the following CAA elements: 110(a)(1) and 110(a)(2)(A), (B), (C), (D)(i)(II)—prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is not acting on 110(a)(2)(D)(i)(I)—prongs 1 and 2. 110(a)(2)(I) is not applicable. EPA intends to act on 110(a)(2)(D)(i)(II)—prong 4 in a separate action. [EPA–R07–OAR–2017–0515; FRL–9968–80–Region 7.]
*	*	*	*	*

[FR Doc. 2017–21532 Filed 10–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2017–0415; FRL–9968–93—Region 4]

Air Plan Approval; Alabama; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of the October 26, 2015, and May 19, 2017, State Implementation Plan (SIP) revisions from Alabama replacing the Cross-State Air Pollution Rule (CSAPR) federal implementation plan (FIP). Under CSAPR, large electricity generating units (EGUs) in Alabama are subject to FIP provisions requiring the units to participate in a federal allowance trading program for ozone season emissions of nitrogen oxides (NO_X). This action approves into Alabama's SIP the State's regulations requiring Alabama's affected units to participate in a new state allowance trading program for ozone season NO_X emissions integrated with the CSAPR federal trading programs, replacing the corresponding CSAPR FIP requirements for Alabama. This state trading program is substantively identical to the federal trading program except with regard to the provisions allocating emission allowances among Alabama units. Under the CSAPR regulations, final approval of these portions of the SIP revisions automatically eliminates Alabama units' FIP requirements to participate in CSAPR's federal allowance trading program for ozone season NO_X emissions. Approval also fully satisfies Alabama's good neighbor obligation under the Clean Air Act (CAA or Act) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 8-hour Ozone National Ambient Air Quality Standards (NAAQS) in any other state; and partially satisfies Alabama's good neighbor obligation under the CAA to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 2008 8-hour Ozone NAAQS in any other state.

DATES: This rule will be effective November 6, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No EPA–R04–OAR–2017–0415. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ashten Bailey, Air Regulatory Management Section, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bailey can be reached by telephone at (404) 562–9164 or via electronic mail at *bailey.ashten@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on CSAPR and CSAPR-Related SIP Revisions

EPA issued CSAPR [1] in July 2011 and the CSAPR Update [2] in 2016 to address

[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through EEEEE of 40 CFR part 97).

[2] *See* 81 FR 74504 (October 26, 2016). The CSAPR Update was promulgated to address interstate pollution with respect to the 2008 8-hour Ozone NAAQS and to address a judicial remand of certain original CSAPR ozone season NO_X budgets promulgated with respect to the 1997 8-hour Ozone NAAQS. *Id.* at 74505. The CSAPR Update established new emission reduction requirements

the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution for specific NAAQS. As amended (including by the 2016 CSAPR Update), CSAPR requires 27 eastern states to limit their statewide emissions of sulfur dioxide (SO_2) and/or NO_X in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: The 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, the 1997 8-hour Ozone NAAQS, and the 2008 8-hour Ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide ''budgets'' for emissions of annual SO_2, annual NO_X, and/or ozone season NO_X by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency: The Phase 1 budgets apply to emissions in 2015 and 2016; and the Phase 2 and CSAPR Update budgets apply to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: A program for annual NO_X emissions; two geographically separate programs for annual SO_2 emissions; and two geographically separate programs for ozone season NO_X emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state.[3] Currently, the CSAPR FIP provisions require each state's units to participate in up to three of the five CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs, provided that the SIP revisions meet all relevant criteria.[4] Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's federal trading programs for ozone season NO_X emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller EGUs.[5] If a state wants to replace the CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR federal trading programs may submit SIP revisions to modify or replace either some or all of those FIP requirements.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.[6] Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations, as described in section III below. Under the first alternative—an ''abbreviated'' SIP revision—a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.[7] Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant federal trading program in place for the state's units.

Under the second alternative—a ''full'' SIP revision—a state may submit a SIP revision that upon approval replaces a CSAPR federal trading program for the state with a state trading program integrated with the federal trading program, so long as the state trading program is substantively identical to the federal trading program or does not substantively differ from the federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.[8] For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's SIP that was the basis for a particular set of CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP revision as meeting the requirements of the CSAPR regulations is full and unconditional.[9] Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.[10] Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units

addressing the more recent ozone NAAQS and coordinated them with the remaining emission reduction requirements addressing the older NAAQS, so that starting in 2017, CSAPR includes two geographically separate trading programs for ozone season NO_X emissions covering EGUs in a total of 23 states. *See* 40 CFR 52.38(b)(1)–(2).

[3] States are required to submit good neighbor SIPs three years after a NAAQS is promulgated. CAA section 110(a)(1) and (2). Where EPA finds that a state fails to submit a required SIP or disapproves a SIP, EPA is obligated to promulgate a FIP addressing the deficiency. CAA section 110(c). EPA found that Alabama failed to make timely submissions required to address the good neighbor provision with respect to the 1997 annual $PM_{2.5}$ and 8-hour ozone NAAQS (70 FR 21147, Apr. 25, 2005), and the 2008 8-hour ozone NAAQS (80 FR 39961, June 13, 2015). In addition, EPA disapproved Alabama's SIP revision submitted to address the good neighbor provision with respect to the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 76 FR 43128 (July 20, 2011). Accordingly, as a part of CSAPR and the CSAPR Update, EPA promulgated FIPs applicable to sources in Alabama addressing the good neighbor provision with respect to these standards.

[4] *See* 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

[5] States covered by both the CSAPR Update and the NO_X SIP Call have the additional option to expand applicability under the CSAPR NO_X Ozone Season Group 2 Trading Program to include non-EGUs that would have participated in the NO_X Budget Trading Program.

[6] CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 (or 2018 for CSAPR NO_X Ozone Season Group 2 units) and is not relevant here. *See* § 52.38(a)(3), (b)(3), (b)(7); § 52.39(d), (g).

[7] 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.39(e), (h).

[8] 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

[9] 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

[10] 40 CFR 52.38(a)(5)(iv)–(v), (a)(6), (b)(5)(v)–(vi), (b)(9)(vi)–(vii), (b)(10)(i); 52.39(f)(4)–(5), (i)(4)–(5), (j).

will continue to apply, unless EPA's approval of the SIP revision provides otherwise.[11]

In the CSAPR rulemaking, among other findings, EPA determined that air pollution transported from Alabama would unlawfully affect other states' ability to attain or maintain the 1997 8-hour Ozone NAAQS.[12] In the CSAPR Update rulemaking, EPA determined that air pollution transported from Alabama would unlawfully affect other states' ability to attain or maintain the 2008 8-hour Ozone NAAQS and established an ozone season NO_X budget for Alabama's EGUs representing a partial remedy for the State's interstate transport obligations with respect to that NAAQS;[13] determined that Alabama's previous ozone season NO_X budget established in the CSAPR rulemaking as a partial remedy for the State's interstate transport obligations with respect to the 1997 8-hour Ozone NAAQS now represented a full remedy with respect to that NAAQS;[14] and coordinated compliance requirements by allowing compliance with the new CSAPR Update budget to serve the purpose of addressing the State's obligations with respect to both NAAQS.[15] Alabama units meeting the CSAPR applicability criteria are consequently subject to CSAPR FIP requirements for participation in the CSAPR NO_X Ozone Season Group 2 Trading Program in order to address the State's interstate transport obligations with respect to both the 1997 8-hour Ozone NAAQS (full remedy) and the 2008 8-hour Ozone NAAQS (partial remedy).[16]

On October 26, 2015, Alabama submitted to EPA a SIP revision including provisions that, if approved, would incorporate into Alabama's SIP state trading program regulations that would replace the CSAPR federal trading program regulations with regard to Alabama units' ozone season NO_X emissions.[17] On May 19, 2017, Alabama submitted to EPA a SIP revision that supersedes portions of the October 26, 2015, submittal to reflect changes from the CSAPR Update.[18] On August 4, 2017, Alabama sent a letter clarifying the State's interpretation concerning the allowances for the Indian country new unit set aside for Alabama.

In a notice of proposed rulemaking (NPRM) published on August 17, 2017 (82 FR 39070), EPA proposed to approve the portions of Alabama's October 26, 2015, and May 19, 2017, SIP submittals designed to replace the federal CSAPR NO_X Ozone Season Group 2 Trading Program. The NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before September 18, 2017. EPA received no adverse comments on the proposed action.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of ADEM Administrative Code rules 335–3–8–.39 through 335–3–8–.70, state effective on June 9, 2017, comprising Alabama's TR NO_X Ozone Season Trading Program. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[19]

III. Final Actions

EPA is approving the portions of Alabama's October 26, 2015, and May 19, 2017, SIP submittals concerning the establishment for Alabama units of CSAPR state trading programs for ozone season NO_X emissions. The revision adopts into the SIP the state trading program rules codified in ADEM Administrative Code rules 335–3–8–.39 through 335–3–8–.70.[20] These Alabama CSAPR state trading programs will be integrated with the federal CSAPR NO_X Ozone Season Group 2 Trading Program and are substantively identical to the federal trading programs except with regard to the allowance allocation provisions. Following approval of these portions of the SIP revision, Alabama units therefore will generally be required to meet requirements under Alabama's CSAPR state trading programs equivalent to the requirements the units otherwise would have been required to meet under the corresponding CSAPR federal trading programs, but allocations to Alabama units of CSAPR NO_X Ozone Season Group 2 allowances for compliance periods in 2019 and later years will be determined according to the SIP's allocation provisions at Alabama rule 335–3–8–.46 instead of EPA's default allocation provisions at 40 CFR 97.811(a) and (b)(1) and 97.812(a). EPA is approving these portions of the SIP revision because they meet the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a federal trading program with a state trading program that is integrated with and substantively identical to the federal trading program except for permissible differences with respect to emission allowance allocation provisions.

EPA promulgated the FIP provisions requiring Alabama units to participate in the federal CSAPR NO_X Ozone Season Group 2 Trading Program in order to address Alabama's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 8-hour Ozone NAAQS and the 2008 8-hour Ozone NAAQS in the absence of SIP provisions addressing those requirements. Under the CSAPR regulations, upon EPA's full and unconditional approval of a SIP revision as correcting the SIP's deficiency that is the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction (but not for any units located in any Indian country within the state's borders).[21] Approval of the portions of Alabama's SIP submittal adopting CSAPR state trading program rules for ozone season NO_X substantively identical to the corresponding CSAPR federal trading

[11] 40 CFR 52.38(a)(7), (b)(11); 52.39(k).

[12] *See* 76 FR 48208, 48210, 48213 (August 8, 2011). EPA also determined in the CSAPR rulemaking that air pollution transported from Alabama would unlawfully affect other states' ability to attain or maintain the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS. Alabama previously submitted, and EPA previously approved, a SIP revision that replaces the CSAPR FIPs for the annual trading programs in Alabama. *See* 81 FR 59869 (August 31, 2016).

[13] CSAPR Update, 81 FR at 74507–08.

[14] *Id.* at 74525.

[15] *Id.* at 74563 n.169.

[16] 40 CFR 52.38(b)(2)(iii); 52.54(b).

[17] As discussed above, the October 26, 2015 submittal also contained provisions related to the annual NO_X and SO_2 trading programs, which EPA approved in a separate rulemaking. *See* 81 FR 59869 (August 31, 2016).

[18] For the purposes of this rulemaking, the October 26, 2015, and May 19, 2017, submittals together may also be referred to as the ''Alabama ozone season submittals.''

[19] 62 FR 27968 (May 22, 1997).

[20] Alabama's rules use the terms ''Transport Rule'' and ''TR'' instead of the updated terms ''Cross-State Air Pollution Rule'' and ''CSAPR.'' For simplicity, EPA uses the updated terms here except where otherwise noted.

[21] 40 CFR 52.38(b)(10); see also 40 CFR 52.54(b)(1) & (2).

program regulations (or differing only with respect to the allowance allocation methodology) satisfies Alabama's obligation pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 8-hour Ozone NAAQS in any other state. This approval also partially satisfies Alabama's obligation pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 2008 8-hour Ozone NAAQS in any other state. Thus, the approval corrects the same deficiencies in the SIP that otherwise would be corrected by those CSAPR FIPs. The approval of the portions of Alabama's SIP submittal establishing CSAPR state trading program rules for ozone season NO_X emissions therefore also results in the automatic termination of the obligations of Alabama units to participate in the federal CSAPR NO_X Ozone Season Group 2 Trading Program.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 25, 2017.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

§ 52.38 [Amended]

■ 2. In § 52.38, paragraph (b)(13)(iv) is amended by removing the word ''[none]'' at the end of the paragraph and adding in its place the word ''Alabama''.

Subpart B–Alabama

■ 3. In § 52.50, the table in paragraph (c) is amended by adding the entries ''Section 335–3–8–.39,'' ''Section 335–3–8–.40,'' ''Section 335–3–8–.41,'' ''Section 335–3–8–.42'', ''Section 335–3–8–.43'', ''Section 335–3–8–.44'', ''Section 335–3–8–.45'', ''Section 335–3–8–.46'', ''Section 335–3–8–.47'', ''Section 335–3–8–.48'', ''Section 335–3–8–.49'', ''Section 335–3–8–.50'', ''Section 335–3–8–.51'', ''Section 335–3–8–.52'', ''Section 335–3–8–.53'', ''Section 335–3–8–.54'', ''Section 335–3–8–.55'', ''Section 335–3–8–.56'', ''Section 335–3–8–.57'', ''Section 335–3–8–.58'', ''Section 335–3–8–.59'', ''Section 335–3–8–.60'', ''Section 335–3–8–.61'', ''Section 335–3–8–.62'', ''Section 335–3–8–.63'', ''Section 335–3–8–.64'', ''Section 335–3–8–.65'', ''Section 335–3–8–.66'', ''Section 335–3–8–.67'', ''Section 335–3–8–.68'', ''Section 335–3–8–.69'', and ''Section 335–3–8–.70'' in numerical order to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	*	*	* *	*
Chapter No. 335–3–8 Control of Nitrogen Oxides Emissions				
* *	*	*	* *	*
Section 335–3–8–.39	TR NO_X Ozone Season Group 2 Trading Program—Purpose and Definitions.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.40	TR NO_X Ozone Season Group 2 Trading Program—Applicability.	11/24/2015	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.41	TR NO_X Ozone Season Group 2 Trading Program—Retired Unit Exemption.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.42	TR NO_X Ozone Season Group 2 Trading Program—Standard Requirements.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.43	TR NO_X Ozone Season Group 2 Trading Program—Computation of Time.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.44	Administrative Appeal Procedures	11/24/2015	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.45	NO_X Ozone Season Group 2 Trading Budgets and Variability Limits.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.46	TR NO_X Ozone Season Group 2 Allowance Allocations.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.47	Reserved	11/24/2015	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.48	Authorization of Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.49	Responsibilities of Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.50	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.51	Certificate of Representation	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.52	Objections Concerning Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.53	Delegation by Designated Representative and Alternate Designated Representative.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.54	Reserved	11/24/2015	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.55	Establishment of Compliance Accounts, Assurance Accounts, and General Accounts.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.56	Recordation of TR NO_X Ozone Season Group 2 Allowance Allocations and Auction Results.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.57	Submission of TR NO_X Ozone Season Group 2 Allowance Transfers.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.58	Recordation of TR NO_X Ozone Season Group 2 Allowance Transfers.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.59	Compliance with TR NO_X Ozone Season Group 2 Emissions Limitation.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.60	Compliance with TR NO_X Ozone Season Group 2 Assurance Provisions.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.61	Banking	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.62	TR NO_X Ozone Season Group 2 Trading Program—Account Error.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	

EPA APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–8–.63	TR NO_X Ozone Season Group 2 Trading Program—Administrator's Action on Submissions.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.64	Reserved	11/24/2015	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.65	General Monitoring, Recordkeeping, and Reporting Requirements.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.66	Initial Monitoring System Certification and Recertification Procedures.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.67	Monitoring System Out-of-Control Periods.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.68	Notifications Concerning Monitoring	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.69	Recordkeeping and Reporting	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
Section 335–3–8–.70	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements.	6/9/2017	10/6/2017, [insert **Federal Register** citation].	
*	*	*	*	*	*	*

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[FR Doc. 2017–21523 Filed 10–5–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0356; FRL–9968–82–Region 7]

Approval of Missouri Air Quality Implementation Plans; Infrastructure SIP Requirements for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) revision from the State of Missouri for the 2008 Ozone National Ambient Air Quality Standard (NAAQS). Section 110 of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This direct final rule will be effective December 5, 2017, without further notice, unless EPA receives adverse comment by November 6, 2017. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0356, to *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7016, or by email at *casburn.tracey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?

EPA is approving the infrastructure SIP submission from the State of Missouri received on July 08, 2013, as meeting the submittal requirements of 110(a)(1). EPA is approving the following elements of section 110(a)(2): (A), (B), (C), (D)(i)(II)—prevent significant deterioration of air quality (prong 3), (D)(ii), (E) through (H), and (J) through (M). EPA is not acting on the elements of section 110(a)(2)(D)(i)(I)—significant contribution to nonattainment (prong 1), interfering with maintenance of the NAAQs (prong 2) because those elements were not addressed in the SIP revision submittal. EPA is not acting on section 110(a)(2)(I). EPA will act on 110(a)(2)(D)(i)(II)—protection of visibility (prong 4) in a separate action.

A Technical Support Document (TSD) is included as part of the docket to discuss the details of this action, including analysis of how the SIP meets the applicable 110 requirements for infrastructure SIPs.

II. Have the requirements for approval of a SIP revision been met?

The state's submission has met the public notice requirements for the Ozone infrastructure SIP submission in accordance with 40 CFR 51.102. The

state held a public comment period from The MDNR held a public hearing and comment period from April 30, 2013 to June 06, 2013. EPA provided comments on May 23, 2013 and were the only commenters. A public hearing was held on May 30, 2013. The submission satisfied the completeness criteria of 40 CFR part 51, appendix V for all elements except 110(a)(2)(D)(i)(I)—prongs 1 and 2. EPA published a document in the **Federal Register**, ''*Findings of Failure to Submit a Section 110 State Implementation Plan for Interstate Transport for the 2008 National Ambient Air Quality Standards for Ozone*''.[1] Missouri was included in this finding because it had not made a complete ''good neighbor'' SIP submittal to meet the section 110(a)(2)(D)(i)(I)—prongs 1 and 2 elements. As explained in more detail in the TSD, which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is taking direct final action to approve elements of the July 08, 2013, infrastructure SIP submission from the State of Missouri, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2008 Ozone NAAQS. As stated above, EPA is approving the revision as meeting the submittal requirement of section 110(a)(1) and approving the following elements of section 110(a)(2): (A), (B), (C), (D)(i)(II)—prong 3, (D)(ii), (E) through (H), and (J) through (M). EPA will act on (D)(i)(II)—prong 4 in a separate action.

EPA is taking no further action with respect to elements of section 110(a)(2)(D)(i)(I)—prongs 1 and 2—because the Cross State Air Pollution Rule (CSAPR) Federal Implementation Plans (FIPs) that require subject units in Missouri to participate in the Federal CSAPR NO_X Annual Trading Program and the Federal CSAPR SO_2 Group 1 Trading Program continue to apply and addresses emissions from subject units that may be contributing to nonattainment (prong 1) or interfering with maintenance (prong 2) of the NAAQS in another state.[2] [3] Additionally, on June 28, 2016, EPA took direct final action to approve Missouri's adoption of state regulations that established state-determined allocations replacing EPA's CSAPR default annual NO_X and annual SO_2 emissions allocation allowances for 2017 and later years as an abbreviated SIP revision.[4]

EPA is not taking action on section 110(a)(2)(I). Section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. EPA does not expect infrastructure SIP submissions to address element (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. EPA will take action on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

IV. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: September 21, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA is amending 40 CFR part 52 as set forth below:

[1] See 80 FR 39961 (August 12, 2015).

[2] See 76 FR 48208 (August 8, 2011).

[3] See 81 FR 74504 (December 27, 2016).

[4] See 81 FR 41838 (August 12, 2016).

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. Amend § 52.1320(e) by adding entry (63) in numerical order to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e)* * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	* * *
(63) Sections 110 (a)(1) and 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	Statewide	7/8/13	10/6/17, [*Insert* ***Federal Register*** *citation*].	This action approves the following CAA elements: 110(a)(1) and 110(a)(2)(A), (B), (C), (D)(i)(II)—prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(D)(i)(I)—prongs 1 and 2 are addressed by a Federal Implementation Plan. 110(a)(2)(I) is not applicable. [EPA–R07–OAR–2015–0356; FRL–9968–82–Region 7.]
*	*	*	*	* * *

[FR Doc. 2017–21528 Filed 10–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2013–0558, FRL–9969–00–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) revisions from the State of North Dakota to demonstrate the State meets infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for sulfur dioxide (SO_2) on June 2, 2010, and fine particulate matter ($PM_{2.5}$) on December 14, 2012.

DATES: This rule is effective on November 6, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2013–0558. 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 either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kate Gregory, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6175, *gregory.kate@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Infrastructure requirements for SIPs are set forth in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking published on June 6, 2017 (82 FR 25999).

In our proposed rule, the EPA proposed to approve some infrastructure elements and to take no action on others for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS from the State's March 7, 2013 and August 23, 2015 certifications,[1] respectively. In this rulemaking, we are taking final action to approve those infrastructure elements from the State's certifications for which we proposed approval.

II. Response to Comments

No comments were received on our June 29, 2017 notice of proposed rulemaking.

III. Final Action

For reasons expressed in the proposed rule, the EPA is taking final action to approve infrastructure elements from the State's certifications as shown in Table 1. Elements we are taking no action on are reflected in Table 2.

TABLE 1—LIST OF NORTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THE EPA IS APPROVING

Approval
March 7, 2013 submittal—2010 SO_2 NAAQS: (A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
August 23, 2015 submittal—2012 $PM_{2.5}$ NAAQS: (A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).

[1] ''Where an air agency determines that the provisions in or referred to by its existing EPA approved SIP are adequate with respect to a given infrastructure SIP element (or sub element) even in light of the promulgation of a new or revised NAAQS, the air agency may make a SIP submission in the form of a certification.'' EPA's ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2),'' September 13, 2013, at 7.

TABLE 2—LIST OF NORTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS TAKING NO ACTION ON

No action (revision to be made in separate rulemaking action)
March 7, 2013 submittal—2010 SO_2 NAAQS: (D)(i)(I) prongs 1 and 2.
August 23, 2015 submittal—2012 $PM_{2.5}$ NAAQS: (D)(i)(I) prongs 1 and 2.

IV. Statutory and Executive Orders Review

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 18, 2017.

Suzanne J. Bohan,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart JJ—North Dakota

■ 2. Section 52.1833 is amended by adding paragraph (f) to read as follows:

§ 52.1833 Section 110(a)(2) infrastructure requirements.

* * * * *

(f) The North Dakota Department of Health provided submissions to meet infrastructure requirements for the State of North Dakota for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS on March 7, 2013 and August 23, 2015, respectively. The State's Infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS is approved with respect to section (110)(a)(1) and the following elements of section (110)(a)(2): (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2017–21520 Filed 10–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2017–0105; FRL–9968–92–Region 4]

Air Plan Approval; Florida; Permitting Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of portions of five State Implementation Plan (SIP) revisions submitted by the State of Florida, Department of Environmental Protection (FDEP), through the Florida Division of Air Resource Management, on June 23, 1999, July 1, 2011, December 12, 2011, February 27, 2013, and February 1, 2017. Florida's SIP revisions recodify, clarify, and reorganize the State's non-title V air permitting and compliance assurance program regulations consistent with flexibility provided

under the Clean Air Act (CAA or Act) and EPA's rules which address new source preconstruction permitting. EPA is finalizing approval of Florida's SIP revisions on the basis that they are consistent with the CAA and EPA's requirements for permitting air emission sources.

DATES: This rule will be effective November 6, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2017–0105. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached by phone at (404) 562–9031 and via electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDEP submitted to EPA for adoption into the Florida SIP five revisions, three of which were submitted on June 23, 1999, July 1, 2011, and February 27, 2013, as part of the State's efforts to clarify and streamline Florida's non-title V air permitting and compliance assurance program and to address EPA's minor source preconstruction requirements under 40 CFR 51.160–51.164. In addition, on December 12, 2011, FDEP submitted a SIP revision to add a definition of ''North American Industry Classification System,'' or ''NAICS,'' to the Florida SIP. On February 1, 2017, FDEP submitted a SIP revision to address requirements for emissions monitoring at stationary sources. The 1999 SIP submission includes amendments to 16 rule sections in the Florida Administrative Code (F.A.C.) that were adopted by the State between 1997 and 1999 to clarify and streamline FDEP's permitting process. The 2011 SIP submission includes clarifying and corrective amendments to 11 F.A.C. rule sections affecting FDEP's permitting regulations that were adopted by the State between 1997 and 2010. In its 2013 SIP submission, FDEP updates the 1999 and 2011 SIP submissions by either resubmitting or withdrawing 12 of the 16 F.A.C. rule sections originally included in those submittals, and providing updated versions of the remaining four rule sections for incorporation into the Florida SIP.

In a proposed rulemaking published on August 10, 2017 (82 FR 37379), EPA proposed to approve specified portions of the five Florida SIP revisions on June 23, 1999, July 1, 2011, December 12, 2011, February 27, 2013, and February 1, 2017. The details of Florida's submissions and the rationale for EPA's actions are explained in the proposed rulemaking. Comments on the proposed rulemaking were due on or before September 11, 2017. EPA received no adverse comments on the proposed action. Accordingly, in this action, EPA is finalizing action regarding the relevant regulations (or portions thereof) from these five SIP submissions.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Florida Chapters 62–210.200 ''Definitions,'' which was state effective 3/28/12; 62–210.310 ''Air General Permits,'' state effective 6/29/11; 62–210.350 ''Public Notice and Comment,'' state effective 10/12/08; 62–296.100 ''Purpose and Scope,'' state effective 10/6/08; 62–296.405 ''Fossil Fuel Steam Generators with More Than 250 Million Btu Per Hour Heat Input,'' state effective 3/2/99; 62–296.406 ''Fossil Fuel Steam Generators with Less Than 250 Million Btu Per Hour Heat Input, New and Existing Emissions Units,'' state effective 3/2/99; 62–296.412 ''Dry Cleaning Facilities,'' state effective 3/11/10; 62–296.414 ''Concrete Batching Plants,'' state effective 1/10/07; 62–296.418 ''Bulk Gasoline Plants,'' state effective 3/11/10; 62–296.500 ''Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Emitting Facilities,'' state effective 3/11/10; 62–296.508 ''Petroleum Liquid Storage,'' state effective 10/6/08; 62–297.310 ''General Emissions Test Requirements,'' state effective 3/9/15; and 62–297.450 ''EPA VOC Capture Efficiency Test Procedures,'' state effective 3/2/99. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1]

III. Final Action

EPA is finalizing approval of portions of the five Florida SIP revisions submitted to EPA on June 23, 1999, July 1, 2011, December 12, 2011, February 27, 2013, and February 1, 2017, on the basis that they are consistent with the CAA and EPA's requirements for permitting air emission sources.

IV. Statutory and Executive Order Reviews

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

- Are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

[1] 62 FR 27968 (May 22, 1997).

• are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA and

• do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 22, 2017.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart K—Florida

■ 2. Section 52.520(c) is amended:

■ a. Under the heading ''Chapter 62–210 Stationary Sources—General Requirements'' by revising the entries for ''62–210.200'', ''62–210.310'' and ''62–210.350'';

■ b. Under the heading ''Chapter 62–210 Stationary Sources—General Requirements'' by removing the entry for ''62–210.920'';

■ c. Under the heading ''Chapter 62–296 Stationary Sources—Emission Standards'' by revising the entries for ''62–296.100'', ''62–296.405'', ''62–296.406'', ''62–296.412'', ''62–296.414'', ''62–296.418'', ''62–296.500'' and ''62–296.508'', and

■ d. Under the heading ''Chapter 62–297 Stationary Sources—Emissions Monitoring'' by revising the entries for ''62–297.310'' and ''62–297.450''.

The revisions read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED FLORIDA REGULATIONS

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 62–210 Stationary Sources—General Requirements				
62–210.200	Definitions	3/28/12	10/6/17, [Insert **Federal Register** citation].	Selected definitions are approved into the SIP.
*	*	*	*	*
62–210.310	Air General Permits	6/29/11	10/6/17, [Insert **Federal Register** citation].	
62–210.350	Public Notice and Comment	10/12/08	10/6/17, [Insert **Federal Register** citation].	Excludes revisions state effective February 11, 1999, which added 62–210.350(1)(c) and 62–210.350(4)(a)2, and revised 62–210.350(4)(b).

EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 62–296 Stationary Sources—Emission Standards				
62–296.100	Purpose and Scope	10/6/08	10/6/17, [Insert **Federal Register** citation].	
*	*	*	*	*
62–296.405	Fossil Fuel Steam Generators with More Than 250 Million Btu Per Hour Heat Input.	3/2/99	10/6/17, [Insert **Federal Register** citation].	
62–296.406	Fossil Fuel Steam Generators with Less Than 250 Million Btu Per Hour Heat Input, New and Existing Emissions Units.	3/2/99	10/6/17, [Insert **Federal Register** citation].	
*	*	*	*	*
62–296.412	Dry Cleaning Facilities	3/11/10	10/6/17, [Insert **Federal Register** citation].	
62–296.414	Concrete Batching Plants	1/10/07	10/6/17, [Insert **Federal Register** citation].	
*	*	*	*	*
62–296.418	Bulk Gasoline Plants	3/11/10	10/6/17, [Insert **Federal Register** citation].	
*	*	*	*	*
62–296.500	Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Emitting Facilities.	3/11/10	10/6/17, [Insert **Federal Register** citation].	
*	*	*	*	*
62–296.508	Petroleum Liquid Storage	10/6/08	10/6/17, [Insert **Federal Register** citation].	Amendments effective 10/6/08
*	*	*	*	*
Chapter 62–297 Stationary Sources—Emissions Monitoring				
62–297.310	General Emissions Test Requirements.	3/9/15	10/6/17, [Insert **Federal Register** citation].	
*	*	*	*	*
62–297.450	EPA VOC Capture Efficiency Test Procedures.	3/2/99	10/6/17, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2017–21504 Filed 10–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0560; FRL–9963–66]

Florpyrauxifen-Benzyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of florpyrauxifen-benzyl in or on rice grain, freshwater fish, shellfish crustacean, and mollusc. Dow AgroSciences LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 6, 2017. Objections and requests for hearings must be received on or before December 5, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0560, 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 L. Goodis, Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; Main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0560 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 5, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0560, 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 December 20, 2016 (81 FR 92758) (FRL–9956–04), 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 5F8403) by Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the herbicide florpyrauxifen-benzyl (2-Pyridinecarboxylic acid, 4-amino-3-chloro-6-(4-chloro-2-fluoro-3-methoxyphenyl)-5-fluoro-, phenylmethyl ester) and florpyrauxifen (metabolite; 2-Pyridinecarboxylic acid, 4-amino-3-chloro-6-(4-chloro-2-fluoro-3-methoxyphenyl)-5-fluoro-), in or on the raw agricultural commodities rice, grain (dehulled) at 0.01 parts per million (ppm); rice, grain at 0.2 ppm; fish, freshwater at 2 ppm; shellfish, crustacean at 0.5 ppm; and shellfish, mollusk at 9 ppm. That document referenced a summary of the petition prepared by Dow AgroSciences LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing tolerance levels that vary from the petitioned-for levels for certain crops and is correcting commodity definitions, as needed, to be consistent with current EPA policy. These changes are explained further 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 florpyrauxifen-benzyl including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with florpyrauxifen-benzyl follows.

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.

Florpyrauxifen-benzyl is not genotoxic and there were no treatment-related findings up to the limit dose (1,000 milligrams/kilogram (mg/kg)/day) or highest doses tested in the acute, short-term, sub-chronic, or chronic oral toxicity studies, two-generation

reproduction or developmental toxicity studies or in the neurotoxicity study. Chronic administration of florpyrauxifen-benzyl did not show any carcinogenicity potential and did not cause any adverse effects in mice, rats or dogs even up to the highest doses tested.

Specific information on the studies received and the nature of the adverse effects caused by florpyrauxifen-benzyl 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 ''Florpyrauxifen-benzyl: New Active Ingredient, First Food Use. Human Health Risk Assessment for the Establishment of Permanent Tolerances on Rice, Fish, and Shellfish and Registration for Uses on Rice and Freshwater Aquatic Weed Control'' dated December 1, 2016 in docket ID number EPA–HQ–OPP–2016–0560.

Because no single or repeated dose study performed by any route of exposure produced an adverse effect following florpyrauxifen-benzyl exposure, toxicity endpoints and points of departure were not selected for florpyrauxifen-benzyl exposure scenarios and a quantitative risk assessment was not conducted. Instead, a qualitative human health risk assessment has been conducted to support the proposed uses of florpyrauxifen-benzyl.

Florpyrauxifen-benzyl is proposed for use on rice and aquatic sites. Humans could potentially be exposed to florpyrauxifen-benzyl residues in food (including fish and shellfish) because florpyrauxifen-benzyl may be applied directly to growing rice and aquatic sites. These applications can also result in florpyrauxifen-benzyl reaching surface and ground water, both of which can serve as sources of drinking water. There are no proposed uses in residential settings and there are no anticipated residential exposures.

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure, unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. EPA considers the toxicity database to be complete and there are no residual uncertainties in the florpyrauxifen-benzyl exposure database. Because there are no threshold effects in the florpyrauxifen-benzyl database, the requirement to retain this safety factor is inapplicable to the current tolerance action.

Based on the lack of toxicity from exposure to residues of florpyrauxifen-benzyl, 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 florpyrauxifen-benzyl.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical enforcement methodology which uses high-performance liquid chromatography with tandem mass spectrometry (HPLC/MS–MS) to quantitate residues of florpyrauxifen-benzyl and florpyrauxifen is available for enforcement.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established a MRL for florpyrauxifen-benzyl.

C. Revisions to Petitioned-For Tolerances

Although a tolerance for rice, grain (dehulled) was requested, EPA determined that no such tolerance is required. Rice, grain (dehulled) is covered by the rice grain tolerance. Based on the Organization of Economic Cooperation and Development (OECD) statistical calculation applied to the field trial (U.S.) residue data, EPA determined that the appropriate tolerance level for rice, grain is 0.30 ppm. The OECD calculation procedures are globally recognized for calculating MRLs to facilitate the harmonization of regulatory limits.

For fish-shellfish, mollusc the tolerance level is established at 20 ppm, rather than the requested 9 ppm, based on the residue data. Also, to be consistent with current EPA policy, the commodity definitions were revised as fish-freshwater finfish; fish-shellfish, crustacean; and fish-shellfish, mollusc, and the Agency added a significant figure to the tolerances for rice, grain; fish-freshwater finfish; and fish-shellfish, crustacean.

V. Conclusion

Despite the lack of toxicity, the EPA is establishing tolerances as requested by the petitioner for international trade purposes. Therefore, tolerances are established for residues of florpyrauxifen-benzyl, including its metabolites and degradates, in or on rice, grain at 0.30 ppm; fish-freshwater finfish at 2.0 ppm; fish-shellfish, crustacean at 0.50 ppm; and fish-shellfish, mollusc at 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: September 8, 2017.

Richard P. Keigwin, Jr.,

Director, 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. Add § 180.695 to subpart C to read as follows:

§ 180.695 Florpyrauxifen-benzyl; Pesticide Tolerances.

(a) *General.* Tolerances are established for residues of florpyrauxifen-benzyl, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of florpyrauxifen-benzyl (phenylmethyl 4-amino-3-chloro- 6-(4-chloro-2-fluoro-3-methoxyphenyl)-5-fluoro-2-pyridinecarboxylate) and its acid metabolite (4-amino-3-chloro-6-(4-chloro-2-fluoro-3-methoxyphenyl)-5-fluoropyridine-2-carboxylic acid) calculated as the stoichiometric equivalent of florpyrauxifen-benzyl, in or on the commodity.

Commodity	Parts per million
Fish—freshwater finfish	2.0
Fish—shellfish, crustacean ...	0.50
Fish—shellfish, mollusc	20
Rice, grain	0.30

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2017–21614 Filed 10–5–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 90, 95, and 97

[ET Docket No. 15–26; FCC 17–94]

Permitting Radar Services in the 76–81 GHz Band

Correction

In rule document 2017–18463 beginning on page 43865 in the issue of Wednesday, September 20, 2017, make the following correction:

§ 2.106 [Corrected]

■ In Part 2, in § 2.106, on page 43869, the table should appear as follows:

76-77.5 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.149	76-81 RADIO ASTRONOMY RADIOLOCATION Space research (space-to-Earth) 5.560 US342	76-77 RADIO ASTRONOMY RADIOLOCATION Amateur Space research (space-to-Earth) US342 77-81 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.560 US342	RF Devices (15) Personal Radio (95) Amateur Radio (97)
77.5-78 AMATEUR AMATEUR-SATELLITE RADIOLOCATON 5.559B Radio astronomy Space research (space-to-Earth) 5.149			
78-79 RADIOLOCATION Amateur Amateur-satellite Radio astronomy Space research (space-to-Earth) 5.149 5.560			
79-81 RADIO ASTRONOMY RADIOLOCATION Amateur Amateur-satellite Space research (space-to-Earth) 5.149			
81-84 FIXED 5.338A FIXED-SATELLITE (Earth-to-space) MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY Space research (space-to-Earth) 5.149 5.561A	81-84 FIXED FIXED-SATELLITE (Earth-to-space) US297 MOBILE MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY Space research (space-to-Earth) US161 US342 US389		RF Devices (15) Fixed Microwave (101)
84-86 FIXED 5.338A FIXED-SATELLITE (Earth-to-space) 5.561B MOBILE RADIO ASTRONOMY 5.149	84-86 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE RADIO ASTRONOMY US161 US342 US389		Page 62

[FR Doc. C1–2017–18463 Filed 10–5–17; 8:45 am]
BILLING CODE 1301–00–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket No. 16–269; FCC 17–75]

Procedures for Commission Review of State Opt-Out Request From the FirstNet Radio Access Network

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) addresses the 758–769/788–799 MHz band, which the Commission licensed to the First Responder Network Authority (FirstNet) on a nationwide basis pursuant to the provisions of the Middle Class Tax Relief and Job Creation Act of 2012. The Report and Order adopts procedures for administering the state opt-out process as provided under the Public Safety Spectrum Act, as well delineating the specific standards by which the Commission will evaluate state opt-out applications.

DATES: Effective November 6, 2017, except for § 90.532(b) and (c), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Nicole Ongele at (202) 418–2991.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–1428. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Nicole Ongele at 202–418–2991, or send an email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PS Docket No. 16–269; FCC 17–75, adopted and released on June 22, 2016. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 and can be downloaded at *https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-75A1.pdf.*

In 2016, the Commission's Notice of Proposed Rulemaking (NPRM), 81 FR 64825, September 21, 2016, sought comment sought comment on implementation of the opt-out review process to be conducted by the Commission, pursuant to certain provisions of the Public Safety Spectrum Act. These included: The procedures and timing for states to notify FirstNet, NTIA, and the Commission of their opt-out elections, completing their RFPs, and for filing their alternative state plans with the Commission; the Commission review process, including timing, defining the scope of participation by interested parties, and treatment of confidential information; what criteria that Commission will use in evaluating alternative state plans; what elements states should include in their alternative state plans to demonstrate compliance with the relevant statutory criteria; and how the Commission's decisions to approve or disapprove alternative state plans will be documented.

In the Report and Order, the Commission finds that the 90-day period states have to inform the Commission of its opt-out decision shall commence when a state has received statutory ''notice'' from FirstNet of the final plan for that state. The Commission also finds that within 180 days of providing its opt-out notice to the Commission, a state must have (1) issued an RFP providing for full deployment of the state RAN (*i.e.,* the RFP must cover the actual network build, not merely development of a plan) and (2) received firm commitment bids on the RFP and selected a winning bidder. A state has 240 days from the opt-out notification date to file its alternative plan with the Commission.

The Commission specifies that Plans filed with the Commission must, at a minimum, (1) address the four general subject areas identified in the Act (construction, maintenance, operation, and improvements of the state RAN), (2) address the two interoperability requirements set forth in sections 6302(e)(3)(C)(i)(I) and (II) of the Act, and (3) specifically address all of the requirements of the Technical Advisory Board for First Responder Interoperability.

The Commission will treat each state opt-out application as a separate restricted proceeding under our rules. The parties to these proceedings will initially include the state filing the application, FirstNet, and NTIA. Other persons or entities seeking to participate in a proceeding may petition the Commission for leave to intervene based on a demonstrated showing of interest. The Commission further imposes a 90-day aspirational shot clock upon itself for Commission action on a properly filed alternative plan.

The Commission will confine its review to the RAN elements of state alternative plans, which it defines as all the cell site equipment, antennas, and backhaul equipment, based on commercial standards, that are required to enable wireless communications with devices using the public safety broadband spectrum including standard E–UTRAN elements (*e.g.,* the eNodeB) and including, but not limited to, backhaul to FirstNet designated consolidation points.

Finally the Commission states that the full Commission will issue a separate Order for each opt-out request. Each order will provide a brief explanation of the Commission's decision based on the statutory criteria as applied to the information submitted in the record.

This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invited the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

In this present document, we have assessed the effects of state opt-out procedures and find that they have no effect on businesses with fewer than 25 employees.

The Commission sent a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156.

■ 2. Section 90.532 is amended by revising the section heading, designating the undesignated paragraph as paragraph (a), adding a paragraph heading to newly designated paragraph (a), and adding paragraphs (b) through (f) to read as follows:

§ 90.532 Licensing of the 758–769 MHz and 788–799 MHz Bands; State opt-out election and alternative plans.

(a) *First Responder Network Authority license and renewal.* * * *

(b) *State election to opt out of the First Responder Network Authority Nationwide Network.* No later than 90 days after receipt of notice from the First Responder Network Authority under section 6302(e)(1) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (Spectrum Act), any State Governor or the Governor's designee shall file with the Commission a notification of the Governor's election to opt out and conduct its own deployment of a State radio access network pursuant to section 6302(e)(2)(B) of the Middle Class Tax Relief and Job Creation Act of 2012. This notification shall be sent to a dedicated email address specified by the Commission or via certified mail to the Secretary's office. At the conclusion of the opt-out notification period, the Public Safety and Homeland Security Bureau shall issue one or more Public Notices denoting which states have elected to opt out. In addition:

(1) Such notification shall also certify that the State has notified the First Responder Network Authority and the National Telecommunications and Information Administration of its election.

(2) If such notice is filed by the Governor's designee, it shall include memorialization of the Governor's delegation of authority in writing with the notice.

(c) *Petitions for leave to intervene.* Entities other than the First Responder Network Authority, the National Telecommunications and Information Administration, and the relevant state may petition the Commission for leave to intervene. Such a petition must be made within 30 days of the Public Notice issued in conformance with paragraph (b) of this section. The petition must note the specific plan on which the filer wishes to comment and clearly detail the filer's interest in the proceeding. This includes an explanation of the filer's interest in the outcome of the particular state's application, as well as an explanation of how the filer's interests are not otherwise represented by the state, FirstNet, or NTIA, or how its participation would otherwise aid the Commission in a full evaluation of the facts.

(d) *Filing of alternative state plans by states electing to opt out.* No later than 240 days after filing notice of a State's election with the Commission under paragraph (b) of this section, the State Governor or the Governor's designee shall file an alternative plan with the Commission for the construction, maintenance, operation, and improvements of the State radio access network. Alternative plans may be sent to a dedicated email address specified by the Commission or via certified mail to the Office of the Secretary.

(e) *Contents of alternative state plans.* An alternative state plan shall include:

(1) An interoperability showing, demonstrating:

(i) Compliance with the minimum technical interoperability requirements developed under section 6203 of the Middle Class Tax Relief and Job Creation Act of 2012; and

(ii) Interoperability with the nationwide public safety broadband network.

(2) Certifications by the State Governor or the Governor's designee, attesting:

(i) Adherence to FirstNet network policies identified by FirstNet as relating to technical interoperability; and

(ii) Completion of the state's request for proposal within 180 days of receipt of notice of the State Plan furnished by the First Responder Network Authority. Such certification may only be made if the state has:

(A) Issued a request for proposal for the state's Radio Access Network;

(B) Received bids for such network; and

(C) Selected a vendor(s).

(f) *Commenting on alternative state plans.* Within 10 business days of the submission of an alternative state plan the Public Safety and Homeland Security Bureau shall determine whether the plan is acceptable for filing under the criteria set forth under paragraphs (d) and (e) of this section. The Bureau shall issue a Public Notice identifying each plan that has been accepted for filing and initiating an abbreviated comment cycle.

(1) The First Responder Network Authority, the National Telecommunications and Information Administration, and any entity granted party status under paragraph (c) of this section may file comments within 15 days of the issuance of the Public Notice set forth in this paragraph (f).

(2) The relevant state may file reply comments within 30 days of the issuance of the Public Notice set forth in this paragraph (f).

(3) States can file the plans, and those granted party status to each proceeding may file comments on the plan, in the specified state docket via a dedicated email address specified by the Commission or via certified mail to the Office of the Secretary.

[FR Doc. 2017–21596 Filed 10–5–17; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2016–0090; 4500030113]

RIN 1018–BB48

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Dalea carthagenensis var. floridana (Florida Prairie-clover), and Threatened Species Status for Sideroxylon reclinatum ssp. austrofloridense (Everglades Bully), Digitaria pauciflora (Florida Pineland Crabgrass), and Chamaesyce deltoidea ssp. pinetorum (Pineland Sandmat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for *Dalea carthagenensis* var. *floridana* (Florida prairie-clover), and threatened species status for *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully), *Digitaria pauciflora* (Florida pineland crabgrass), and *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat). All four plant species are endemic to south Florida. This rule adds these species to the Federal List of Endangered and Threatened Plants.

DATES: This rule is effective November 6, 2017.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection on the Internet at *http://www.regulations.gov,* or in person, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, South Florida Ecological Services Field Office, 1339 20th Street, Vero Beach, FL 32960; telephone 772–562–3909; facsimile 772–562–4288.

FOR FURTHER INFORMATION CONTACT: Roxanna Hinzman, U.S. Fish and Wildlife Service, South Florida Ecological Services Field Office (see **ADDRESSES**, above). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species is an endangered or threatened species 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. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

This rule makes final the listing of *Dalea carthagenensis* var. *floridana* (Florida prairie-clover) as an endangered species, and *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully), *Digitaria pauciflora* (Florida pineland crabgrass), and *Chamaesyce deltoidea* ssp. *pinetorum* (pineland sandmat) as threatened species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (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 the threats to *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* consist primarily of habitat loss and modification through urban and agricultural development, and lack of adequate fire management (Factor A); and the proliferation of nonnative invasive plants, stochastic events (hurricanes, storm surge, wildfires), maintenance practices used on roadsides and disturbed sites, and sea level rise (Factor E). Existing regulatory mechanisms have not been adequate to reduce or remove these threats (Factor D).

Peer review and public comment. We sought comments from independent specialists to ensure that our decision is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal, and we received comments from three peer reviewers. We also considered all comments and information we received from the public during the comment period.

Previous Federal Action

Please refer to the proposed listing rule for *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* (81 FR 70282; October 11, 2016) for a detailed description of previous Federal actions concerning these species.

Summary of Comments and Recommendations

In the proposed rule published on October 11, 2016 (81 FR 70282), we requested that all interested parties submit written comments on the proposal by December 12, 2016. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Miami Herald and Key West Citizen. We did not receive any requests for a public hearing.

Also, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with scientific expertise that included familiarity with the four species and their habitat, biological needs, and threats. We received responses from all three peer reviewers.

All substantive information provided during the comment period has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana.* The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final rule. We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of the four plants. Where appropriate, we have incorporated corrections, editorial suggestions, and new literature and other information provided into the final rule. Any substantive comments are discussed below.

Comment: One peer reviewer indicated that recent studies suggest some previously known taxonomic indicators are not reliable to distinguish between *Sideroxylon reclinatum* ssp. *reclinatum* and *S. reclinatum* ssp. *austrofloridense.* Therefore, survey results from Big Cypress National Park (BCNP) cited in the proposed rule may have significantly underestimated *S. reclinatum* ssp. *austrofloridense* distribution and abundance. The reviewer also indicated that given the large number of individuals and more widespread distribution created by the recent taxonomic evaluation of this taxon, the Service does not have adequate information to support classifying this taxon as threatened.

Our Response: We appreciate the information and agree that if taxonomic indicators do not reliably distinguish between *Sideroxylon reclinatum* ssp. *reclinatum* and *S. reclinatum* ssp. *austrofloridense,* then *S. reclinatum* ssp. *austrofloridense'*s distribution and abundance may be greater than survey results cited in the proposed rule. We have incorporated the additional information on *S. reclinatum* ssp. *austrofloridense'*s distribution in BCNP into this rule in the ''Current Range, Population Estimates, and Status'' (Table 1) section for the subspecies. However, despite recent taxonomic changes that may result in greater abundance and distribution for *S. reclinatum* ssp. *austrofloridense,* we have determined that the subspecies qualifies as threatened. This is because sea level rise is projected to have profound negative effects on *S. reclinatum* ssp. *austrofloridense* and all of its habitat throughout its range in the foreseeable future, even when the additional distribution is considered. Decades prior to inundation, pine rocklands and marl prairies are likely to undergo habitat transitions related to climate change, including changes to hydrology and increasing vulnerability

to storm surge, rendering these areas unsuitable for *S. reclinatum* ssp. *austrofloridense.*

Public Comments

We received one public comment with new information on the historical distribution of *Chamaesyce deltaoidea* spp. *pinetorum;* we have incorporated this information into the final rule.

Summary of Changes From Proposed Rule

In the Background section, we made the following changes based on peer review and public comments:

(1) We incorporated new information on the life history, site locations, abundance and distribution of *Dalea carthagenensis* var. *floridana, Sideroxylon reclinatum* ssp. *Austrofloridense, Digitaria pauciflora,*and *Chamaesyce deltoidea* ssp. *Pinetorum* as appropriate.

(2) We incorporated new information on the ecology and plant species composition of pine rockland, marl prairie, coastal berm, and rockland hammock habitats.

(3) We incorporated new information regarding *ex situ* conservation for *Dalea carthagenensis* var. *floridana, Chamaesyce deltoidea* ssp. *pinetorum,* and *Digitaria pauciflora.*

(4) We incorporated new information on the taxonomic indicators of *Sideroxylon reclinatum* ssp. *austrofloridense* used in comparison with the similar subspecies *S. reclinatum* ssp. *reclinatum.*

In the Summary of Factors Affecting the Species section, we made the following changes:

(5) We incorporated new information regarding the threat of scale insects and *Cassytha filiformis* infestations on *Dalea carthagenensis* var. *floridana.*

(6) We clarified our discussion of regulatory protection for State-listed plants on private lands through FAC 5B–40.

(7) We clarified our discussion of restoration management to indicate it only be conducted by highly trained crews.

(8) We incorporated new information regarding potential drier conditions in response to hydrological restoration within the Everglades.

Summary of Biological Status and Threats

Sideroxylon reclinatum ssp. austrofloridense (Everglades bully)

Species Description

Sideroxylon reclinatum ssp. *austrofloridense* is a single to many-stemmed shrub, 3 to 6 feet (ft) (1 to 2 meters (m)) tall (Corogin and Judd 2014, pp. 410–412). The branches are smooth, slightly bent, and somewhat spiny. The leaves are thin, oval-shaped, 0.8 to 2 inches (in) (2 to 5 centimeters (cm)) long, evergreen, lance-shaped, and fuzzy on their undersides. The flowers are in axillary clusters (Long and Lakela 1971, p. 679).

Sideroxylon reclinatum ssp. *austrofloridense* is distinguished from the similar subspecies *S. reclinatum* ssp. *reclinatum* in Florida by its leaves, which are persistently pubescent (fuzzy) on their undersides, rather than smooth or pubescent only along the leaf midvein (Wunderlin and Hansen 2003, p. 603). In addition, the two subspecies are more reliably distinguished by differences in the micromorphology of the leaf epidermis, and by the extent of distribution of *S. r.* ssp. *austrofloridense,* which is limited to extreme southern peninsular Florida (Corogin and Judd 2014, p. 404).

Taxonomy

The genus *Sideroxylon* is represented by eight species in Florida. All of these plants were previously assigned to the genus *Bumelia. Sideroxylon reclinatum,* the Florida bully, is represented by three subspecies that range nearly throughout Florida and into neighboring states. The Everglades subspecies was first recognized by Whetstone (1985, pp. 544–547) as *Bumelia reclinata* var. *austrofloridense,* then transferred to the genus *Sideroxylon* (Kartesz and Gandhi 1990, pp. 421–427). *Sideroxylon reclinatum* ssp. *austrofloridense* was made a subspecies rather than a variety (Kartesz and Gandhi 1990, pp. 421–427); in plant nomenclature, the ranks of variety and subspecies are interchangeable. *Sideroxylon reclinatum* ssp. *austrofloridense* is used in the current treatment of the Florida flora (Wunderlin and Hansen 2016, p. 1).

The online Atlas of Florida Vascular Plants (Wunderlin and Hansen 2016, p. 1), Integrated Taxonomic System (ITIS 2016, p. 1), NatureServe (2016, p. 1), and the Florida Department of Agriculture and Consumer Services (FDACS) (Coile and Garland 2003, p. 19) indicate that *Sideroxylon reclinatum* ssp. *austrofloridense* is the accepted taxonomic status.

Sideroxylon reclinatum ssp. *austrofloridense* is differentiated from *S. reclinatum* ssp. *reclinatum* by a set of distinct characters at the micromorphological level (Corogin and Judd 2014, p. 408). The two taxa are also separated eco-geographically. *Sideroxylon reclinatum* ssp. *austrofloridense* is a narrow endemic, restricted to pine rockland and marl prairie habitats in a well-defined area of extreme southeast peninsular Florida. Conversely, *Sideroxylon reclinatum* ssp. *reclinatum* is more wide-ranging, occurring coastally from southern Georgia west to Louisiana, and throughout Florida as far south as Broward County in the east, and Collier and Monroe Counties in the west. The only place where plants of both species overlap is within BCNP, at the western fringe of *Sideroxylon reclinatum* ssp. *austrofloridense'*s range (Corrogin and Judd 2014, p. 409).

Climate

The climate of south Florida where *Sideroxylon reclinatum* ssp. *austrofloridense* occurs is classified as tropical savanna and is characterized by distinct wet and dry seasons and a monthly mean temperature above 18 degrees Celsius (°C) (64.4 degrees Fahrenheit (°F)) in every month of the year (Gabler *et al.* 1994, p. 211). Freezes can occur in the winter months, but are infrequent at this latitude in south Florida. Rainfall in the area where *Sideroxylon reclinatum* ssp. *austrofloridense* occurs varies from an annual average of 153–165 cm (60–65 in) in the northern portion of the Miami Rock Ridge to an average of 140–153 cm (55–60 in) in the southern portion. Approximately 75 percent of yearly rainfall occurs during the wet season from June through September (Snyder *et al.* 1990, p. 238).

Habitat

Sideroxylon reclinatum ssp. *austrofloridense* grows in pine rockland habitat, marl prairie habitat and within the ecotone between both habitats (Gann *et al.* 2006, p. 12; Bradley *et al.* 2013, p. 4; Gann 2015, p. 31). These habitats are maintained by regular fire, and are prone, particularly marl prairie, to annual flooding for several months during the wet season (Gann *et al.* 2006, p. 13; Bradley *et al.* 2013, p. 4). *Sideroxylon reclinatum* ssp. *austrofloridense* also grows on the sunny edges of rockland hammock habitat (Gann 2015, p. 412), which is fire-resistant. Historically, fire served to maintain the boundary between pine rockland and rockland hammock by eliminating the encroachment of hardwoods into pine rocklands. Absent natural or prescribed fire, many pine rocklands have succeeded to rockland hammock (Florida Natural Area Inventory [FNAI] 2010, p. 25). Canopy cover on the interior of rockland hammock is too dense to support herbs and smaller shrub species, such as *S. r.* ssp. *austrofloridense,* that require more sunlight. For a detailed description of

pine rockland, marl prairie, and rockland hammock habitats, please see the proposed listing rule (81 FR 70282; October 11, 2016).

Sideroxylon reclinatum ssp. *austrofloridense* occurs in sparsely vegetated, well-lit, open areas that are maintained by disturbance. However, the dynamic nature of the habitat means that areas not currently open may become open in the future as a result of canopy disruption from hurricanes or invasive plant management, while areas currently open may develop more dense canopy over time, eventually rendering that portion of the hammock unsuitable for *S. r.* ssp. *austrofloridense.*

Historical Range

The historical range of *Sideroxlon reclinatum* ssp. *austrofloridense* is limited to Collier, Miami-Dade, and Monroe Counties, Florida. In Miami-Dade County, the plant was known from central and southern Miami-Dade County along the Miami Rock Ridge, which extends from Long Pine Key in the Everglades northward through urban Miami to the Miami River. In Monroe County, the plant is known from BCNP on the mainland, and was collected as far south as Key Largo, in the Florida Keys. In Collier County, the subspecies has been recorded only within BCNP. All known historical and current records for *Sideroxylon reclinatum* ssp. *austrofloridense* are summarized below in Table 1.

Current Range, Population Estimates, and Status

The current range of *Sideroxylon reclinatum* ssp. *austrofloridense* is BCNP, the Long Pine Key region of ENP, and pine rocklands adjacent to ENP (Hodges and Bradley 2006, p. 42; Gann *et al.* 2006, p. 11; Bradley 2007, pers. comm.; Possley 2011a and 2011b, pers. comm.; Sadle 2011, pers. comm.; Bradley *et al.* 2013, p. 4; Gann 2015, p. 30). The subspecies is apparently extirpated from Key Largo. *Sideroxylon reclinatum* ssp. *austrofloridense* has not been found in surveys of pine rocklands on Key Largo, Big Pine Key, Cudjoe Key and Lower Sugarloaf Key (Hodges and Bradley 2006, p. 42). The current range is approximately 42 mi (67.5 km) (Gann *et al.* 2002, p. 526; Corogin and Judd 2014, p. 412).

The largest population occurs at Long Pine Key in ENP (Hodges and Bradley 2006, p. 42; Gann *et al.* 2006, p. 11; Gann 2015, p. 9). The population at Long Pine Key is estimated at between 10,000–100,000 plants (Gann *et al.* 2006, pp. 9–11; Gann 2015, p. 29). Recent surveys of ENP have identified 14 occurrences of *Sideroxylon reclinatum* ssp. *austrofloridense* in Long Pine Key, expanding the known range in ENP (Gann 2015, p. 30).

In Miami-Dade County, outside ENP, pine rocklands tracts are orders of magnitude smaller and exist in a matrix of agricultural, commercial, and residential development. Approximately 73 plants were observed at Larry and Penny Thompson Park, within the Richmond Pine Rocklands (Possley and McSweeney 2005, p. 1). Extant populations have been found at Quail Roost Pineland (two plants), Navy Wells Pineland Preserve (four plants), and Sunny Palms Pinelands (two plants) (Possley 2011a and 2011b, pers. comm.). The subspecies has been observed in pine rocklands at Grant Hammock and Pine Ridge Sanctuary (Bradley *et al.* 2013, p.1). The subspecies no longer occurs at the Nixon-Smiley Preserve.

Surveys in the Gum Slough region of Lostmans Pines in BCNP reported finding *Sideroxylon reclinatum* ssp. *austrofloridense* with limited distribution within the study area (Bradley *et al.* 2013, pp. 1–8). However, Sadle (2016, pers. comm.) suggests that additional taxonomic research on *Sideroxylon reclinatum* ssp. *reclinatum* may indicate that *S. r.* ssp. *austrofloridense* is more widespread in BCNP than is currently known.

TABLE 1—SUMMARY OF THE STATUS OF THE KNOWN OCCURRENCES OF SIDEROXYLON RECLINATUM SSP. AUSTROFLORIDENSE

Population	Ownership	Most recent population estimate (year)	Status
Everglades National Park	National Park Service	10,000–100,000 [1] (2013)	Extant.
Camp Everglades	Boy Scouts of America	Unknown	Extant.[2]
Big Cypress National Preserve	National Park Service	extant (2013) [3]	Extant.
Larry and Penny Thompson Park	Miami-Dade County	73 (2005) [4]	Extant.
Nixon-Smiley Preserve	Miami-Dade County	0 (Unknown) [3]	Extirpated.
Navy Wells Pineland Preserve	Miami-Dade County	4 (2011) [5]	Extant.
Frog Pond	South Florida Water Management District.	1 (2015) [1 2]	Extant.
Sunny Palms Pineland	Miami-Dade County	2 (2011) [5]	Extant.
Pine Ridge Sanctuary	Private	Unknown	Extant.[3]
Lucille Hammock	Miami-Dade County	11–100 (2007) [3]	Extant.
South Dade Wetlands	Miami-Dade County	Unknown (2007) [3]	Extant.
Natural Forest Community #P–300	Private	2–10 (2007) [3]	Extant.
Natural Forest Community #P–310	Private	11–100 (2007) [3]	Extant.
Quail Roost Pineland	Miami-Dade County	2 (2011) [5]	Extant.
Grant Hammock	Unknown	Unknown (Unknown)	Extirpated.[3]
Key Largo	Unknown	No estimate (1948)	Extirpated.[6]

[1] Gann 2015, p. 29.
[2] Lange 2016, pers. comm.
[3] Bradley *et al.* 2013, pp. 1–8.
[4] Possley and McSweeney 2005, p. 1.
[5] Possley 2011a and 2011b, pers. comm.
[6] Hodges and Bradley 2006, p. 42.

Biology

Life History and Reproduction: Little is known about the life history of *Sideroxylon reclinatum* ssp. *austrofloridense,* including pollination biology, seed production, or dispersal (Gann 2015, p. 31). Reproduction is sexual, with new plants generated from seeds. The subspecies produces flowers from April to May, and fruit ripens from June to July (Corogin and Judd 2014, pp. 410–412). The plants can stand partial inundation with fresh water for a portion of the year, but do not tolerate salinity. *Sideroxylon reclinatum* ssp.

austrofloridense frequently has numerous stem galls, but these galls do not appear to cause mortality to the plant and may in fact be an important part of the subspecies' natural history (Lange 2016, pers. comm.). In addition, the stem galls are often inhabited by acrobat ants (*Crematogaster* spp.) (Lange 2016, pers. comm.).

Fire Ecology and Demography: There have been no detailed studies of *Sideroxylon reclinatum* ssp. *austrofloridense's* relationship to fire; however, periodic fire is extremely important to maintaining habitat for this subspecies (Corogin and Judd 2014, p. 414). Therefore, historical declines have been partially attributed to habitat loss from fire suppression or inadequate fire management (ENP 2014, p. 173).

Digitaria pauciflora (Florida pineland crabgrass)

Species Description

Digitaria pauciflora is a small perennial clump-grass, appearing blue-green to gray with reddish-brown stems, typically 0.5 to 1 m (1.5 to 3 ft) tall (Small 1933, p. 51). The leaves form a subtle zig-zag pattern as the leaf blades come off the stem at an angle. The flowers are dull green and very small, and are borne on wispy spikes on the ends of the leafy stems, with usually only a few flower clusters forming per clump of grass. Stolons (aboveground horizontal stems) are not present (Webster and Hatch, 1990, pp. 161–162); however, inflorescence branches have been known to produce roots infrequently at their nodes, and these have been observed producing new ramets (belowground horizontal stems) that allow for vegetative spread (Fellows *et al.* 2003, p. 142; Lange 2016, pers. comm.). *Digitaria pauciflora* is known to reproduce sexually (Bradley and Gann 1999, p. 50), with fruit production in the fall (Wendelberger and Maschinski 2006, p. 3).

Taxonomy

Digitaria pauciflora was first described in 1928, based on specimens collected in 1903 (Bradley and Gann 1999, p. 49), and was later placed in the genus *Syntherisma* (Small 1933, pp. 50–51). Subsequent authors (Hitchcock 1935, p. 561; Webster & Hatch 1990, p. 161; Wunderlin 1998) have retained it in the genus *Digitaria* (Bradley and Gann 1999, p. 49). *D. pauciflora* was absent from collections from 1939 until 1973, when it was rediscovered in ENP (Bradley and Gann 1999, p. 49).

The online Atlas of Florida Vascular Plants uses the name *Digitaria pauciflora* (Wunderlin and Hansen 2016, p. 1). The Integrated Taxonomic System (ITIS 2016, p. 1), NatureServe (2016, p. 1), and the Florida Department of Agriculture and Consumer Services (FDACS) (Coile and Garland 2003, p. 19) indicates that its taxonomic status is accepted. We have carefully reviewed all taxonomic data to determine that *Digitaria pauciflora* is a valid taxon. The only synonym is *Syntherisma pauciflora* (Hitchcock) Hitchcock ex Small (ITIS 2016, p. 1).

Climate

The climate of south Florida where *Digitaria pauciflora* occurs is classified as tropical savanna, as described above for *Sideroxylon reclinatum* ssp. *austrofloridense.*

Habitat

Digitaria pauciflora occurs predominantly within the seasonally flooded ecotone between pine rockland and marl prairie, although the species may overlap somewhat into both habitats (Bradley and Gann 1999, p. 49; Fellows *et al.* 2002, p. 79). Plants can withstand inundation with fresh water for one to several months each year (ENP 2014, p. 172). These habitats are maintained by regular fire, and are prone, particularly marl prairie, to annual flooding for several months during the wet season (Gann *et al.* 2006, p. 13). Pine rocklands and marl prairies are described in detail in the proposed listing rule (81 FR 70282; October 11, 2016).

Historical Range

All known historical and current records for *Digitaria pauciflora* are summarized below in Table 2. The historical range of *D. pauciflora* consists of central and southern Miami-Dade County along the Miami Rock Ridge, from southern Miami to Long Pine Key region of ENP, a range of approximately 42 mi (67.6 km) (Bradley and Gann 1999, p. 49). Specimens of *D. pauciflora* were collected early in the 20th century throughout Miami-Dade County. The plant then went unreported for several decades before being rediscovered at Long Pine Key in 1973. *D. pauciflora* has subsequently been encountered consistently within Long Pine Key (Bradley and Gann 1999, p. 49).

A single *Digitaria pauciflora* plant was discovered in 1995, within marl prairie habitat at the Martinez Pinelands in the Richmond Pine Rocklands, an area of Miami-Dade County that retains the largest contiguous areas of pine rockland habitat outside of the Everglades. However, this plant has since disappeared (Herndon 1998, p. 88; Bradley and Gann 1999, p. 49; Gann 2015, p. 142). Three other historical occurrences in Miami-Dade County have been documented: (1) A site between Cutler and Longview Camp (last observed in 1903); (2) Jenkins Homestead (date unspecified); and (3) south Miami (last observed in 1939) (Bradley 2007, pers. comm.). However, little is known regarding the status of these populations. The species was not found during a 2-year project to survey and map rare and exotic plants along Florida Department of Transportation (FDOT) rights-of-way within Miami-Dade and Monroe Counties (Gordon *et al.* 2007, pp. 1, 38).

Current Range, Population Estimates, and Status

The current range of *Digitaria pauciflora* includes ENP and BCNP (Bradley and Gann 1999, p. 49; Gann *et al.* 2006, p. 3; Gann 2015, p. 142). Ongoing surveys suggest the species occurs throughout Long Pine Key of ENP (Gann *et al.* 2006, p. 7; Gann 2015, p. 144) and is much wider-ranging than previously known in ENP, where populations may be characterized as abundant (Maschinski and Lange 2015, pp. 31–33).

In 2002, *Digitaria pauciflora* was discovered within the Lostmans Pines region of BCNP in Monroe County (Bradley *et al.* 2013, p. 2). This represented the first known *D. pauciflora* occurrence outside Miami-Dade County (FNAI 2007, p. 191). The species is widely distributed within Lostmans Pines (Bradley *et al.* 2013, pp. 1–8). Subsequent surveys for the species within BCNP have documented up to nine occurrences, some of which contain an estimated 500–600 plants (Maschinski *et al.* 2003, p. 141). Bradley *et al.* (2013, pp. 1–8) conducted surveys in the Gum Slough region of Lostmans Pines and indicated that the species is widely distributed within the study area. A total of 2,365 plants were counted within pineland and sawgrass based survey plots (Bradley *et al.* 2013, pp. 3–4). The rangewide population estimate for *D. pauciflora* is 100,000 to 200,000 individuals at Long Pine Key (Maschinski and Lange 2015, p. 18) and greater than 10,000 individuals within BCNP (Bradley 2007, pers. comm.). Although its preferred habitats are fire-dependent and flood adapted, large-scale wildfire and flooding can drastically reduce the size of *D. pauciflora* populations. For example, in the spring months of 2016, extensive wildfires in areas occupied by *D. pauciflora* likely reduced populations in ENP over a greater area than managed by prescribed fire in an average year. The populations will likely rebound;

however, regeneration could be severely hampered, based on the amount and duration of flooding during the region's late summer storm season. While *Digitaria pauciflora* populations remain abundant within ENP and BCNP, these areas represent only half of the species' historical range (Bradley and Gann 1999, p. 25; Gann 2015, p. 167). While *D. pauciflora* was known to occur throughout Miami-Dade County, all other populations are likely extirpated.

TABLE 2—SUMMARY OF THE STATUS OF THE KNOWN OCCURRENCES OF DIGITARIA PAUCIFLORA

Population	Ownership	Most recent population estimate	Status
Everglades National Park	National Park Service	100,000–200,000 (2015) [1] [4]	Extant.
Camp Everglades	Boy Scouts of America	100–1,000 (2016) [2]	Extant.
Big Cypress National Preserve	National Park Service	>10,000 (2007) [3]	Extant.
Martinez Pineland	Miami-Dade County	0 (1999) [2] [3]	Extirpated.
Cutler and Longview Camp	Unknown	Unknown (1903) [3]	Extirpated.
Jenkins Homestead	Unknown	Unknown (date unspecified) [3]	Extirpated.
South Miami	Unknown	Unknown (1939) [3]	Extirpated.

[1] Gann 2015, p. 142.
[2] Lange 2016, pers. comm.
[3] Bradley 2007, pers. comm.
[4] Maschinski and Lange 2015, p. 18.

Biology

Life History and Reproduction: Little is known about the life history of *Digitaria pauciflora,* including pollination biology, seed production, or dispersal. Reproduction is sexual, with new plants generated from seeds (Bradley and Gann, 1999, p. 53). The species produces flowers from summer to late fall on both new and older growth, some plants have been observed to finish seeding as late as December (Fellows *et al.* 2002, p. 2; Gann 2015, p. 172). Plants can also spread clonally via rhizomes (Webster and Hatch, 1990, pp. 161–162). The plants can stand partial inundation with fresh water for a portion of the year, but do not tolerate salinity.

Fire Ecology and Demography: Digitaria pauciflora population demographics or longevity have not been studied (Bradley and Gann, 1999, p. 53; Fellows *et al.* 2002, p. 2). There have been no studies of the plant's relationship to fire; however, periodic fire is extremely important to maintaining habitat for this species (Bradley and Gann, 1999, p. 53; ENP 2014, p. 226). Therefore, historical declines have been partially attributed to habitat loss from fire suppression or inadequate fire management. The species shows patch dynamics, colonizing new areas and undergoing local extinctions with high rates of turnover (Gann 2015, p. 142). Plants with ''flashy'' or ''boom and bust'' demographic patterns are more susceptible to stochastic extinction events. ENP has burned populations of *D. pauciflora* during the wet and dry season, and both appear suitable to maintain populations of the plant (ENP 2014, p. 226).

Chamaesyce deltoidea ssp. pinetorum (pineland sandmat)

Species Description

Chamaesyce deltoidea ssp. *pinetorum* is an ascending to erect perennial herb. The stems are hairy and often reddish. The leaf blades range from kidney-shaped or triangle-shaped and elliptic to oval. The fruit is a 2-mm broad, pubescent capsule. The seeds are 1 mm long, transversely wrinkled, and yellowish in color (Small 1933, p. 795). *C. deltoidea* ssp. *pinetorum* reproduces sexually (Bradley and Gann 1999, p. 25). Fruit production is year-round, with a peak in the fall (Wendelberger and Maschinski 2006, p. 2).

Taxonomy

Chamaesyce deltoidea ssp. *pinetorum* was first described by Small in 1905, based on specimens collected in eastern Miami-Dade County (Small 1905, pp. 429–430). Initially, Small referred to these specimens as *C. pinetorum* but recognized that it was closely related to *Chamaesyce deltoidea.* Herndon (1993, pp. 38–51) included *C. pinetorum* within the *C. deltoidea* complex, which is composed of three other taxa, two occurring farther north on the Miami Rock Ridge, and one occurring on Big Pine Key in the lower Florida Keys (Monroe County). The three taxa on the Miami Rock Ridge have distinct, but adjacent, ranges. Subsequently, Herndon (1993, pp. 38–51) has placed all four taxa at the same taxonomic level, treating each as a distinct subspecies under *Chamaesyce deltoidea* (*C. deltoidea* ssp. *pinetorum, C. deltoidea* ssp. *serpyllum, C. deltoidea* ssp. *adhaerens,* and *C. deltoidea* ssp. *deltoidea*). *Chamaesyce deltoidea* ssp. *deltoidea* and *C. deltoidea* ssp. *adhaerens* occur north of known *C. deltoidea* ssp. *pinetorum* populations, while *Chamaesyce deltoidea* ssp. *serpyllum* is endemic to Big Pine Key. Wunderlin and Hansen (2016, p. 1) follow Herndon's treatment in using *C. deltoidea* ssp. *pinetorum.* Some modern authors place the genus *Chamaesyce* into the genus *Euphorbia sensu lato* (Yang and Berry 2011, pp. 1486–1503). Gann (2015, p. 168) indicates that if placed into the genus *Euphorbia,* the correct name of pineland sandmat is *Euphorbia deltoidea* ssp. *pinetorum.*

The online Atlas of Florida Vascular Plants uses the name *Chamaesyce deltoidea* ssp. *pinetorum* (Small) Herndon (Wunderlin and Hansen 2016, p. 1). NatureServe (2016, p. 1) and FDACS (Coile and Garland 2003, p. 11) indicate that *C. deltoidea* ssp. *pinetorum* is accepted. However, the Integrated Taxonomic Information System (ITIS 2016, p. 1) accepts *Euphorbia deltoidea* ssp. *pinetorum* as the scientific name for the subspecies (Gann 2015, p. 168). We have carefully reviewed all taxonomic data to determine that *C. deltoidea* ssp. *pinetorum* is a valid taxon.

Climate

The climate of south Florida where *Chamaesyce deltoidea* ssp. *pinetorum* occurs is classified as tropical savanna, as described above for *Sideroxylon reclinatum* ssp. *austrofloridense.*

Habitat

Chamaesyce deltoidea ssp. *pinetorum* occurs in pine rocklands (Bradley and Gann 1999, p. 24). Pine rocklands are maintained by regular fire, and are prone to annual flooding for several months during the wet season (Gann *et al.* 2006, p. 13). However, *C. deltoidea* ssp. *pinetorum* generally occurs in higher elevation pine rocklands at Long Pine Key in ENP, in areas rarely subject to flooding (Gann 2015, p. 169).

A detailed description of pine rockland habitat is discussed in the proposed listing rule (81 FR 70282; October 11, 2016).

Historical Range

Chamaesyce deltoidea ssp. *pinetorum* occurred historically only with the southern portion of the Miami Rock Ridge, from Homestead to the Long Pine Key region of ENP, a range of approximately 42 mi (67.6 km) (Bradley and Gann 1999, p. 24). *C. deltoidea* ssp. *pinetorum* has been encountered consistently within Long Pine Key, as well as several County-owned conservation lands adjacent to the ENP (Gann 2015, p. 167). All known historical and current records for *Chamaesyce deltoidea* ssp. *pinetorum* are summarized in Table 3, below.

Current Range, Population Estimates, and Status

The current range of *Chamaesyce deltoidea* ssp. *pinetorum* is similar to the historical range, although 98 percent of the pine rocklands (the species' only habitat) outside of the ENP has been lost to development (Kernan and Bradley 1996, p. 2). The total population size of *Chamaesyce deltoidea* ssp. *pinetorum* is estimated to be 14,500–146,000 individuals, with the majority of the population occurring on Long Pine Key (Bradley and Gann 1999, p. 25; Gann 2015, p. 167). However, while *Chamaesyce deltoidea* ssp. *pinetorum* is most abundant within ENP, pine rockland fragments outside of the Everglades represent about half the subspecies' extant range (Bradley and Gann 1999, p. 25; Bradley 2007, pers. comm.; Gann 2015, p. 167).

TABLE 3—SUMMARY OF THE STATUS OF THE KNOWN OCCURRENCES OF CHAMAESYCE DELTOIDEA SSP. PINETORUM

Population	Ownership	Most recent population estimate	Status
Everglades National Park	National Park Service	10,000–100,000 (2011) [5]	Extant.
Camp Everglades	Boy Scouts of America	Unknown	Extant.[1]
Florida City Pineland	Miami-Dade County	33 (2009) [2]	Extant.
Navy Wells	Miami-Dade County	1,000–10,000 (2007) [2 3]	Extant.
Navy Wells #39	Miami-Dade County	500 or more (2013) [2]	Extant.
Palm Drive Pineland	Miami-Dade County	0 (2012) [2]	Possibly Extirpated.
Pine Ridge Sanctuary	Private	10–100 (2011) [3 4]	Extant.
Rock Pit #39	Miami-Dade County	419 (2012) [2]	Extant.
Seminole Wayside Park	Miami-Dade County	614 (2015) [2]	Extant.
Fuchs Hammock Addition	Miami-Dade County	~20 (2011) [2]	Extant.
Sunny Palms Pineland	Miami-Dade County	1,000–10,000 (2015) [2]	Extant.
John Kunkel Small Pineland	Institute for Regional Conservation	Present (2006) [2 3]	Extant.
Natural Forest Community (NFC) P–330	private	11–100 (2007) [3]	Extant.
NFC P–338	private	1,001–10,000 (2007) [3]	Extant.
NFC P–339	private	11–100 (2007) [3]	Extant.
NFCP–347	private	11–100 (2007) [3]	Extant.
NFCP–411	private	101–1,000 (2007) [3]	Extant.
NFCP–413	private	11–100 (2007) [3]	Extant.
NFCP–416	private	11–100 (2007) [3]	Extant.
NFCP–445	private	1,001–10,000 (2007) [3]	Extant.

[1] Lange 2016, pers. comm.
[2] Possley 2017, pers. comm.
[3] Bradley 2007, pers. comm.
[4] FNAI 2011.
[5] Gann 2015, p. 167.

Biology

Life History and Reproduction: Little is known about the life history of *Chamaesyce deltoidea* ssp. *pinetorum.* Reproduction is sexual, but little is known about the reproductive biology and ecology of the subspecies (Bradley and Gann 1999, p. 25; Gann 2015, p. 167). Herndon (1998, pp. 13–14) found up to 88 percent of plants survived more than 3 years, showing that it is a somewhat long-lived taxon. The extensive root system of *C. deltoidea* ssp. *pinetorum* also suggests that it is a long-lived plant (Maschinski *et al.* 2003, p. 179). Some of the plants recorded as dead during surveys may have instead been in a cryptic phase (Herndon 1998, pp. 13–14); Gann 2015, p. 167). Pollinators are unknown; some other species of *Chamaesyce* are completely reliant on insects for pollination and seed production, while others are self-pollinating (Maschinski *et al.* 2003, p. 179; Gann 2015, p. 168). Pollinators may include bees, flies, ants, and wasps (Ehrenfeld 1979, p. 95; Gann 2015, p. 168). Dispersal is unknown for *Chamaesyce deltoidea* ssp. *pinetorum;* however, many seed capsules in similar *Chamaesyce* species are explosively dehiscent, a form of dispersal that flings seeds far from the parent plant (Maschinski *et al.* 2003, p. 179; Gann 2015, p. 168). *Chamaesyce deltoidea* ssp. *pinetorum* is thought to have a similar, but reduced, level of dispersal (Lange 2016, pers. comm.). This species is known to flower and fruit year round (Wendelberger and Maschinski 2006, p. 2). Peaks in fruiting for *C. deltoidea* ssp. *pinetorum* occur in the fall and are stimulated by fire (Wendelberger and Maschinski 2006, p. 2). The plants can stand partial inundation with fresh water for a portion of the year, but do not tolerate salinity.

Fire Ecology and Demography: There have been no studies of *Chamaesyce deltoidea* ssp. *pinetorum* demographics. However, the subspecies is not shade tolerant, and it requires periodic low-intensity fires to reduce competition by woody species to maintain habitat (Bradley and Gann 1999, p. 26; ENP 2014, p. 170). Therefore, historical declines have been partially attributed to habitat loss from fire suppression or inadequate fire management.

Dalea carthagenensis var. floridana (Florida prairie-clover)

Species Description

Dalea carthagenensis var. *floridana* is a short-lived (less than 8 years) perennial shrub that is 2.6 to 9.8 ft (0.8 to 3.0 m) tall with a light brown woody

stem and non-woody, light brown or reddish branches. The leaves are composed of 9 to 15 oval, gland-tipped leaflets, and are gland-dotted on the underside. The flowers are in small loose heads at ends of hairy, glandular stalks, less than 0.4 in long. The flower color is white and maroon; each of the petals is different lengths and shapes. The fruit is a small one-seeded pod, mostly enclosed by the hairy, gland-dotted calyx (bracts at base of each flower) (adapted from Long and Lakela 1971, p. 478; Bradley and Gann 1999, p. 42; Maschinski *et al.* 2014, p. 44).

Taxonomy

Chapman (1886, p.102) was the first to report this taxon in Florida, calling it the tropical *Dalea domingensis,* based on specimens collected on Key Biscayne. Small (1913, p. 89) accepted this epithet but included the taxon in the genus *Parosela,* making the plant *P. domingensis.* Rydberg (1920, p. 114) renamed the plant, calling it *Parosela floridana,* which was retained by Small (1933, pp. 694–695). Clausen (1946a, p. 85) reviewed the taxonomy of Florida and West Indian *Dalea* and considered them all to be the same species. Clausen (1946a, p. 85) also found that the name *D. domingensis* was a homonym of *D. emphysodes,* and published the name *D. emphysodes* ssp. *domingensis.* Clausen (1946b, p. 572) later discovered that his use of the name *D. emphysodes* was in error, and renamed the plants *D. carthagenensis* ssp. *domingensis.* Long and Lakela (1971, p. 478) accepted this usage. Barneby (1977), in a monograph of the genus, also found that Florida plants were distinct from West Indian plants, citing differences in leaf characters, naming the Florida species *D. carthagenensis* var. *floridana.* Wunderlin (1998) has followed this treatment.

The Integrated Taxonomic Information System (2016, p. 1) indicates that the taxonomic standing for *Dalea carthagenensis* var. *floridana* (Rydb.) Barneby is accepted. The online Atlas of Florida Vascular Plants (Wunderlin and Hansen 2016, p. 1) uses the name *D. carthagenensis* var. *floridana,* as does NatureServe (2016, p. 1). FDACS uses the name *Dalea carthagenensis* and notes that *D. carthagenensis* var. *floridana* is endemic (Coile and Garland 2003, p. 17). In summary, there is consensus that *D. carthagenensis* var. *floridana* is a distinct taxon. We have carefully reviewed the available taxonomic information to reach the conclusion that *D. carthagenensis* var. *floridana* is a valid taxon.

Climate

The climate of south Florida where *Dalea carthagenensis* var. *floridana* occurs is classified as tropical savanna as described above for *Sideroxylon reclinatum* ssp. *austrofloridense.*

Habitat

Dalea carthagenensis var. *floridana* grows in pine rockland, rockland hammock, marl prairie, and coastal berm, and in the ecotones between these habitats (Bradley and Gann 1999, p. 43). It occurs in sparsely vegetated, well-lit, open areas that are maintained by disturbance. However, the dynamic nature of the habitat means that areas not currently open may become open in the future as a result of canopy disruption from hurricanes or invasive plant management, while areas currently open may develop more dense canopy over time, eventually rendering that portion of the hammock unsuitable for *D. carthagenensis* var. *floridana.* Detailed descriptions of pine rockland, marl prairie, rockland hammock, and coastal berm habitats are discussed in the proposed listing rule (81 FR 70282; October 11, 2016). The species may also occur along roadsides within these habitats (Gann *et al.* 2006, p. 10). A detailed description of roadside habitat is presented in the proposed listing rule (81 FR 70282; October 11, 2016).

Historical Range

The historical range of *Dalea carthagenensis* var. *floridana* includes Miami-Dade, Monroe, Collier, and Palm Beach Counties (Gann *et al.* 2015, pp. 25–26). There have been no reports of this plant from Palm Beach County since 1918 (Bradley and Gann 1999, p. 42). In Miami-Dade County, the plant has been extirpated from a number of historical locations, including Castellow Hammock, ENP, the Coral Gables area, pinelands south of the Miami River, and Cox Hammock (Bradley and Gann 1999, pp. 42–43; Bradley 2007, pers. comm.; Maschinski *et al.* 2014, p. 39). Gann *et al.* (2002, pp. 408–411) accounted for essentially every herbarium specimen and reliable sighting. *D. carthagenensis* var. *floridana* is presumed to be extirpated within ENP (Gann 2015, pp. 25–26). All known historical and current records for *D. carthagenensis* var. *floridana* are summarized below in Table 4.

Current Range, Population Estimates, and Status

The current range of *Dalea carthagenensis* var. *floridana* includes BCNP (Monroe and Collier Counties), three Miami-Dade County conservation areas, and three additional unprotected lands within the Cutler Bay region of Miami-Dade County (Maschinski *et al.* 2014, p. 39)

In 1999, *Dalea carthagenensis* var. *floridana* was rediscovered within BCNP (Bradley and Gann 1999, p. 42). Maschinski *et al.* (2014, p. 31) subsequently surveyed the four extant populations on BCNP, finding two of them. An area north of Oasis Visitor Center contained 236 plants (of various ages) and represents the largest extant population within BCNP. The second extant population was in the Pinecrest region (along Loop Road) of BCNP, an historical location within the Park; however, only 17 plants were encountered. *D. carthagenensis* var. *floridana* was not found at 11-Mile Road, nor at a second location along Loop Road, during the surveys.

Extensive surveys of extant *Dalea carthagenensis* var. *floridana* populations at Charles Deering Estate, RHMP, and Crandon Park within Miami-Dade County have been conducted over the past decade (Maschinski *et al.* 2014, pp. 31–34). During 2003 to 2007, the population at Charles Deering Estate ranged from between 50 and 80 individuals, with the number of seedlings ranging from 3 to 54. However, beginning in 2008, studies documented pulses in seedling establishment (Maschinski *et al.* 2014, p. 33). In 2010, the total population size (seedlings and woody plants) was 356 individuals. The majority of these were seedlings and basal re-sprouts from a fire that affected approximately one-third of the population (Maschinski *et al.* 2010, p. 24). A 2014 survey found 347 plants (Maschinski *et al.* 2015, p. 30). However, the population declined to 164 and 170 in 2016 and 2017, respectively (Lange *et al.* 2016, p. 10; Possley 2017, pers. comm.).

The population at RHMP declined from 31 plants in 2004 to just 1 woody plant and 3 seedlings in 2008. In 2009, Fairchild Tropical Botanic Garden (FTBG) initiated reintroduction of *Dalea carthagenensis* var. *floridana* at RHMP, documenting 52 established plants from the 6,000 seeds sown (Maschinski *et al.* 2015, p. 30). Subsequently, those plants have reproduced, resulting in several generations of *Dalea carthagenensis* var. *floridana* within the reintroduction area. A density of 350 individuals was recorded in early 2017 (Possley 2017, pers. comm.) at this location.

In 2003, *Dalea carthagenensis* var. *floridana* was rediscovered within coastal uplands at Crandon Park for the first time since 1966 (Maschinski *et al.* 2010, p. 28). The population at Crandon Park appears to be stable; however, it is highly localized to a small area of

approximately 145 square miles (Possley and Maschinski 2009, p. 10). During 2007, FTBG initiated a demographic study of *D. carthagenensis* var. *floridana.* Sampling plots found 200 plants of various sizes resulting in a population estimate of 966 plants at the site (Maschinski 2007, pers. comm.; Possley and Maschinski 2009, p. 10). Subsequent surveys have shown the population to vary considerably, possibly due to a short lifespan or plant dormancy (Possley and Maschinski 2009, p. 10). Surveys at Crandon Park identified 288, 168, and 416 individuals, in 2014, 2015, and 2016 respectively (Maschinski *et al.* 2015, p. 32; Lange *et al.* 2016, p. 12). Additional known populations within Miami-Dade County are summarized below in Table 4.

TABLE 4—SUMMARY OF THE STATUS OF THE KNOWN OCCURRENCES OF DALEA CARTHAGENENSIS VAR. FLORIDANA

Population	Ownership	Most recent population estimate	Status
Everglades National Park	National Park Service		Extirpated (1964).
Big Cypress National Preserve, North of Oasis Visitor Center.	National Park Service	236 (2014) [1]	Extant.
Big Cypress National Preserve, 11-Mile Road.	National Park Service	0 (2014) [1]	Extirpated (2014).
Big Cypress National Preserve, Pinecrest.	National Park Service	17 (2014) [1]	Extant.
Charles Deering Estate	Miami-Dade County	170 (2017) [5]	Extant.
Virginia Key	City of Miami	4 (2010) [2]	Extant.
R. Hardy Matheson Preserve	Miami-Dade County	350 (2017) [2]	Extant.
Crandon Park	Miami-Dade County	416 (2016) [3]	Extant.
Strawberry Fields Hammock (next to Natural Forest Community).	Private	17 (2014) [4]	Extant.
Florida Department of Health and Rehabilitative Services.	Private	21 (2014) [4]	Extant.
Florida Power and Light property	Private	2–10 (2007) [4]	Extant.
Coral Gables area	Private		Extirpated (1967).[6]
Cox Hammock	Private		Extirpated (1930).[6]
Castellow Hammock Preserve	Miami-Dade County		Extirpated (1975).[6]
Pineland South of Miami River	Unknown	Unknown	Unknown.[6]
Palm Beach County	Private		Extirpated (1918).[6]

[1] Maschinski *et al.* (2014, p. 31).
[2] Maschinski *et al.* (2015, pp. 30–33).
[3] Lange *et al.* (2016, p. 12).
[4] Maschinski *et al.* (2014, p. 39).
[5] Possley 2017, pers. comm.
[6] Bradley 2007, pers. comm.

Biology

Life History and Reproduction: Dalea carthagenensis var. *floridana* appears to be a short-lived (less than 8 years) perennial with a persistent seed bank (Maschinski *et al.* 2014, p. 45; Lange *et al.* 2016, p.15). *D. carthagenensis* var. *floridana* produces flowers from October to March and fruit ripen from November to April. The seed maturation period is January to May, with a peak in February and March. Larger plants can produce over 500 seeds. Seedling recruitment varies widely from year to year, with lower recruitment in drier years. Seedlings and juveniles experience rapid growth in their first 2 years (Maschinski *et al.* 2014, p. 45). The plants can withstand partial inundation with fresh water for a portion of the year, but do not tolerate salinity.

Ongoing survey data were used from the Crandon Park population to conduct a preliminary population viability analysis (PVA) (Maschinski *et al.* 2014). The population at Crandon Park declined by 33 percent from 2007 to 2009. High seedling recruitment increased numbers in 2010, which stabilized the population until 2014, when a pulse of high recruitment occurred. The study indicated that 3 years had declining population growth and 4 years were stable or increasing, a cyclic pattern characteristic of short-lived species. The PVA indicated that the external cues (temperature and soil moisture) required to break dormancy positively influenced *Dalea carthagenensis* var. *floridana* population dynamics. However, if coupled with seedling mortality, serious population decline resulted. Low winter temperature coupled with average rainfall resulted in high seedling recruitment and good seedling survival; however, if high rainfall followed cold winter temperatures, as was noted for winter 2010, seedling mortality was high (Maschinski *et al.* 2014, p. 41).

Fire Ecology and Demography: Periodic fire is extremely important to maintaining habitat for *Dalea carthagenensis* var. *floridana* (Maschinski *et al.* 2015, p. 39). The most recent surveys of RHMP indicated a stable *D. carthagenensis* var. *floridana* population, including 295 seedlings that germinated following a prescribed burn (Maschinski *et al,* 2015, p. 30). Therefore, historical declines have been partially attributed to habitat loss from fire suppression or inadequate fire management.

Summary of Factors Affecting the Species

The Act directs us to determine whether any species is an endangered species or a threatened species because of any one of five factors affecting its continued existence. In this section, we summarize the biological condition of

each of the plant species and its resources, and the factors affecting them, to assess the species' overall viability and the risks to that viability.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Sideroxylon reclinatum ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* have experienced substantial destruction, modification, and curtailment of their habitat and ranges. Specific threats to these plants included in this factor include habitat loss, fragmentation, and modification caused by development (*i.e.,* conversion to both urban and agricultural land uses) and inadequate fire management. Each of these threats and its specific effects on these plants are discussed in detail below.

Human Population Growth, Development, and Agricultural Conversion

The modification and destruction of the habitats that support *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* has been extreme in most areas of Miami-Dade and Monroe Counties, thereby reducing the plants' current range and abundance in Florida. The pine rockland community of south Florida, in which these species primarily occur, is critically imperiled locally and globally (FNAI 2010, p. 27). Destruction of pine rocklands and rockland hammocks has occurred since the beginning of the 1900s. Extensive land clearing for human population growth, development, and agriculture in Miami-Dade and Monroe Counties has altered, degraded, or destroyed thousands of acres of these once abundant ecosystems.

In Miami-Dade County, development and agriculture have reduced pine rockland habitat by 90 percent in mainland south Florida. Pine rockland habitat in Miami-Dade County, including ENP, was reduced to about 11 percent of its natural extent, from approximately 74,000 hectares (ha) (183,000 acres (ac)) in the early 1900s, to only 8,140 ha (20,100 ac) in 1996 (Kernan and Bradley 1996, p. 2). The largest remaining intact pine rockland (approximately 2,313 ha (5,716 ac)) is Long Pine Key in ENP. Outside of ENP, only about 1 percent of the pine rocklands on the Miami Rock Ridge have escaped clearing, and much of what is left are small remnants scattered throughout the Miami metropolitan area, isolated from other natural areas (Herndon 1998, p. 1). Habitat loss continues to occur in these plants' range, and most remaining suitable habitat has been negatively altered through human activity (illegal clearing, dumping), preclusion of fire, and introduction of nonnative species.

Significant remaining pine rockland habitat occurs on private lands and publically owned lands that are not dedicated to or managed for conservation. The species occurring on this remaining suitable habitat face threats from habitat loss and degradation, and threats are expected to accelerate with increased development. The human population within Miami-Dade County is currently greater than 2.4 million people, and the population is expected to grow to more than 4 million by 2060, an annual increase of roughly 30,000 people (Zwick and Carr 2006, p. 20).

Some of the known populations of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* occur on public conservation lands. Miami-Dade County has developed a network of publicly owned conservation lands within Miami-Dade County, but prescribed fire is lacking at many of these sites. ENP and BCNP actively manage their respective pine rockland habitat with prescribed fire. However, any extant populations of these plants or suitable habitat that may occur on non-conservation public or private land, such as within the Richmond Pine Rocklands, are vulnerable to habitat loss directly from development or indirectly by lack of management.

The marl prairie habitat that also supports *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* has similarly been destroyed by the rapid development of Miami-Dade and Monroe Counties. At least some of the occurrences reported from this habitat may be the result of colonization that occurred after the habitat was artificially dried-out due to local or regional drainage. Marl prairie on non-conservation public or private land remains vulnerable to development, which could lead to the loss of populations of these species.

Sideroxylon reclinatum ssp. *austrofloridense* occurs in numerous pine rocklands outside of ENP within Miami-Dade County, most of which are impacted by some degree by development. Two privately owned sites in Miami-Dade County supporting *Sideroxylon reclinatum* ssp. *austrofloridense* are vulnerable to habitat loss from development. Eight sites that support the species are public land, which provides for some management and protection. However, one population on public land, the county-owned Nixon-Smiley Preserve, is extirpated.

Two extant populations of *Digitaria pauciflora* are located at ENP and BCNP, public lands managed for conservation. The third extant population is located at Camp Everglades, a property within ENP owned by the Boy Scouts of America; this property is managed, in coordination with ENP, for conservation. Outside the protected lands of ENP and BCNP, *Digitaria pauciflora* occurred throughout Miami-Dade County, including as recently as 1995 within remnant marl prairie habitats of the Martinez Pineland. Martinez Pineland is adjacent to several other remnant pine rocklands that form the largest contiguous area of pine rockland habitat in Miami-Dade County. However, *D. pauciflora* has since disappeared (Herndon 1998, p. 88; Bradley and Gann 1999, p. 49) from Martinez Pineland, and plans are being reviewed for development of private portions (see discussion of Richmond Pine Rocklands, below). Three other historical occurrences in Miami-Dade County had been documented; however, *D. pauciflora* is extirpated from these sites; the four historical sites comprise half of the species' historical range (Bradley and Gann 1999, p. 25; Gann 2015, p. 167). Surveys did not document other extant *D. pauciflora* populations along FDOT rights-of-way within Miami-Dade and Monroe Counties (Gordon *et al.* 2007, pp. 1, 38).

Eight populations of *Chamaesyce deltoidea* ssp. *pinetorum* located on private land are vulnerable to habitat loss due to development. Ten extant populations occur on public land and are largely protected from development.

Dalea carthagenensis var. *floridana* has been extirpated from a number of historical locations within Miami-Dade County, including ENP for unknown reasons, and by development at Castellow Hammock, in the Coral Gables area, the pinelands south of the Miami River, and Cox Hammock (Bradley and Gann 1999, pp. 42–43; Maschinski *et al.* 2014, p. 39). In addition, there have been no reports of *D. carthagenensis* var. *floridana* from Palm Beach County since 1918, and this area is now densely developed (Bradley and Gann 1999, p. 42). Six populations occur on public lands and are protected from development. Three extant populations occur on private land and

are vulnerable to habitat loss from development. However, because this is a highly localized plant, which is difficult to survey for, it is possible that additional extant populations exist (Lange 2016, pers. comm.).

Currently, there are plans to develop 55 ha (137 ac) of the largest remaining parcel of pine rockland habitat in Miami-Dade County, the Richmond Pine Rocklands, with a shopping center and residential construction (Ram 2014, p. 2). This parcel has been called the ''the largest and most important area of pine rockland in Miami-Dade County outside of Everglades National Park'' (Bradley and Gann 1999, p. 4). Although *Digitaria pauciflora* is extirpated from Richmond Pine Rocklands, populations of *Sideroxylon reclinatum* ssp. *austrofloridense,* along with numerous other federally listed species, still occur there. The Miami-Dade County Department of Environmental Resources Management (DERM) has completed a management plan for portions of the Richmond Pine Rocklands under a grant from the Service and is leading the restoration and management of the Richmond Pine Rocklands (Bradley and Gann 1999, p. 4). The developer has proposed to enter into a habitat conservation plan (Ram 2014, p. 2) in conjunction with their plans to develop their portion of the site and was required by Miami-Dade County Natural Forest Community (NFC) regulations to set aside and manage 17 ha (43 ac) of pine rockland and associated habitats. A second project that would result in the loss of pine rockland habitat has been proposed for the Richmond Pine Rocklands. It includes expanding the Miami Zoo complex to develop an amusement park and commercial entities. These development projects will result in the loss of pine rockland habitat that maintains a population of *Sideroxylon reclinatum* ssp. *austrofloridense* as well as several federally listed species, and may preclude future recovery options for the four plants (such as compromising the land managers' ability to burn within Richmond Pine Rocklands).

Habitat Fragmentation

The remaining pine rocklands in the Miami metropolitan area are severely fragmented and isolated from each other. Habitat fragmentation reduces the size of plant populations and increases spatial isolation of remnants. The effects of fragmentation on *Angadenia berteroi* (pineland golden trumpet) show that abundance and fragment size were positively related (Barrios *et al.* 2011, p. 1062). Plant species richness and fragment size are positively correlated (although some small fragments supported nearly as many species as the largest fragment) in south Florida pine rocklands (Possley *et al.* 2008, p. 385). Composition of fragmented habitat typically differs from that of intact forests, as isolation and edge effects increase leading to increased abundance of disturbance-adapted species (weedy species, nonnative invasive species) and lower rates of pollination and propagule dispersal (Laurence and Bierregaard 1997, pp. 347–350.; Noss and Csuti 1997, pp. 284–299). The degree to which fragmentation negatively impacts the dispersal abilities of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* is unknown. In the historical landscape, where pine rockland occurred within a mosaic of wetlands, water may have acted as a dispersal vector for all pine rockland seeds. In the current fragmented landscape, this type of dispersal would no longer be possible for any of the Miami-Dade populations, because they exist in isolated habitat patches surrounded by miles of unsuitable habitat (agriculture and urban development) on every side. While additional dispersal vectors may include animals and (in certain locations) mowing equipment, it is likely that fragmentation has effectively reduced these plants' ability to disperse.

While pollination research has not been conducted for *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana,* research regarding other species and ecosystems provides valuable information regarding potential effects of fragmentation to these plants. Effects of fragmentation may include changes to the pollinator community as a result of limitation of pollinator-required resources (*e.g.,* reduced availability of rendezvous plants, nesting and roosting sites, and nectar/pollen); these changes may include changes to pollinator community composition, species abundance and diversity, and pollinator behavior (Rathcke and Jules 1993, pp. 273–275; Kremen and Ricketts 2000, p. 1227; Harris and Johnson 2004, pp. 30–33). As a result, plants in fragmented habitats may experience lower visitation rates, which in turn may result in reduced seed production of the pollinated plant (which may lead to reduced seedling recruitment), reduced pollen dispersal, increased inbreeding, reduced genetic variability, and ultimately reduced population viability (Rathcke and Jules 1993, p. 275; Goverde *et al.* 2002, pp. 297–298; Harris and Johnson 2004, pp. 33–34).

The effects of fragmentation on fire go beyond edge effects and include reduced likelihood and extent of fires, and altered behavior and characteristics (*e.g.,* intensity) of those fires that do occur. Habitat fragmentation encourages the suppression of naturally occurring fires, and has prevented fire from moving across the landscape in a natural way, resulting in an increased amount of habitat suffering from these negative impacts. High fragmentation of small habitat patches within an urban matrix discourages the use of prescribed fire as well due to logistical difficulties (see ''Fire Management,'' below).

Forest fragments in urban settings are also subject to increased likelihood of certain types of human-related disturbance, such as the dumping of trash (Chavez and Tynon 2000, p. 405) and illegal clearing. The many effects of habitat fragmentation may work in concert to negatively impact the local persistence of a species, especially in small populations (see discussion below); when a species' range of occurrence is limited, as with these four plants, threats to local persistence increase extinction risk.

Fire Management

One of the primary threats to *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* is habitat modification and degradation through inadequate fire management, which includes both the lack of prescribed fire and suppression of natural fires. Where the term ''fire-suppressed'' is used below, it describes degraded pine rockland conditions resulting from a lack of adequate fire (natural or prescribed) in the landscape. Historically, frequent (approximately twice per decade), lightning-induced fires were a vital component in maintaining native vegetation and ecosystem functioning within south Florida pine rocklands (see the ''Habitat'' discussion under the heading *Sideroxylon reclinatum* ssp. *austrofloridense,* above). A period of just 10 years without fire may result in a marked decrease in the number of herbaceous species due to the effects of shading and litter accumulation (FNAI 2010, p. 63). Exclusion of fire for approximately 25 years will likely result in gradual hammock development over that time period, leaving a system that is very fire resistant if additional pre-fire management (*e.g.,* mechanical hardwood removal) is not undertaken.

Today, natural fires are unlikely to occur or are likely to be suppressed in the remaining, highly fragmented pine rockland habitat. The suppression of natural fires has reduced the size of the areas that burn, and habitat fragmentation has prevented fire from moving across the landscape in a natural way. Without fire, successional climax from pine rockland to rockland hammock takes 10 to 25 years, and displacement of native species by invasive, nonnative plants often occurs. All occurrences of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* are affected by some degree from inadequate fire management, with the primary threat being shading by hardwoods (Bradley and Gann 1999, p. 15; Bradley and Gann 2005, entire). Shading may also be caused by a fire-suppressed (and, in some cases, planted) pine canopy that has evaded the natural thinning effects that fire has on seedlings and smaller trees, for example, as is seen on the pine rockland habitat on the Miami Rock Ridge (Gann 2013, pers. comm.). Understory plants such as *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* are shaded out after just 10 years without fire, by hardwoods and nonnatives alike.

Whether the dense canopy is composed of pine, hardwoods, nonnatives, or a combination, seed germination and establishment are inhibited in fire-suppressed habitat due to accumulated leaf litter, which also changes soil moisture and nutrient availability (Hiers *et al.* 2007, pp. 811–812). This alteration to microhabitat can also inhibit seedling establishment as well as negatively influence flower and fruit production (Wendelberger and Maschinski 2009, pp. 849–851), thereby reducing sexual reproduction in fire-adapted species such as *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* (Geiger 2002, pp. 78–79, 81–83).

After an extended period of inadequate fire management in pine rocklands, it becomes necessary to control invading native hardwoods mechanically, as excess growth of native hardwoods would result in a hot fire, which can cause mortality of pines and destroy the rootstocks and seed banks of other native plants. Mechanical treatments cannot entirely replace fire because pine trees, understory shrubs, grasses, and herbs all contribute to an ever-increasing layer of leaf litter, covering herbs and preventing germination, as discussed above. Leaf litter will continue to accumulate even if hardwoods are removed mechanically. In addition, the ashes left by fires provide important post-fire nutrient cycling, which is not provided via mechanical removal.

Studies on the impacts of fire on *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* are ongoing. Fire is critical in maintaining the open understory and species diversity in pine rocklands and marl prairies where these species occur, as well as to reduce populations of nonnative plant species. Fire maintains the ecotone (transition) between saw grass marsh, pine rockland, and rockland hammock habitats where *S. reclinatum* ssp. *austrofloridense* grows.

It is anticipated that some natural mortality of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* may occur from fire, especially more intense fires. *S. reclinatum* ssp. *austrofloridense* and *C. deltoidea* ssp. *pinetorum* grow in wet marl soils and soil deposits within cracks in the limestone bedrock, which provides protection to the roots and allow plants to resprout following fire. *C. deltoidea* ssp. *pinetorum,* in particular, possesses a well-developed rootstock that is protected from fire (ENP 2014, p. 203). Herndon (1998, p. 28) pointed out that the life history of *C. deltoidea* ssp. *pinetorum* includes a cryptic stage, making interpretation of mortality of aboveground parts difficult.

Sideroxylon reclinatum ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* demonstrate differences in mortality or long-term population impacts as a result of wet or dry season burns. Indirect evidence suggests that burning in either season is suitable to maintain populations of *S. reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* and *C. deltoidea* ssp. *pinetorum* in pine rocklands. Prescribed fire in ENP was originally conducted during the dry season. Fire management was gradually shifted to wet season burning in an effort to better mimic natural lightning ignited fire patterns. As a result, pinelands and marl prairies in ENP where *S. reclinatum* ssp. *austrofloridense, D. pauciflora,* and *C. deltoidea* ssp. *pinetorum* occur have been burned in both the wet season and dry season. Long-term maintenance of populations in those areas indicates that either practice will sustain populations of these species.

Federal (Service, National Park Service [NPS]), State (Florida Department of Environmental Protection (FDEP), Florida Fish and Wildlife Conservation Commission (FWC)), and County (Miami-Dade, DERM) land managers, and nonprofits (Institute for Regional Conservation (IRC)) implement prescribed fire on public and private lands within the ranges of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana*. Even in areas under active management, some portions are typically fire-suppressed. Nevertheless, all of these sites retain a contingent of native species and a seedbank capable of responding to fire.

While ENP, BCNP, and various Miami-Dade County conservation lands (*e.g.,* Navy Wells Pineland Preserve) each attempt to administer prescribed burns, the threat of inadequate fire management still remains. The pine rocklands in the Long Pine Key region of ENP remained largely fire-suppressed for the past decade as ENP updated its fire management plan. Although prescribed fire was returned to Long Pine Key in early 2016, many areas retained substantial amounts of unburned understory vegetation. As a result, despite reintroduction of a fire regime, several large-scale wildfires ignited during the spring months of 2016, which burned up to 50 percent of the pine rocklands in Long Pine Key. Ultimately, this combination of prescribed burns and natural fires (if not too hot or lasting too long) is likely to improve conditions for *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* and *Chamaesyce deltoidea* ssp. *pinetorum* populations within ENP. For example, at 3 to 6 months post-burn, these species appear to be recolonizing burned areas (Sadle 2016, pers. comm.; Salvato 2016, pers. obs.). However, this chain of events also demonstrates the threat prolonged or insufficient fire management may pose to local populations of an imperiled species, even on public conservation lands.

While management of some County conservation lands includes regular burning, other lands remain severely fire-suppressed. Implementation of a prescribed fire program in Miami-Dade County has been hampered by a shortage of resources, and by logistical difficulties and public concern related to burning next to residential areas. Many homes have been built in a

mosaic of pine rockland, so the use of prescribed fire in many places has become complicated because of potential danger to structures and smoke generated from the burns. Nonprofit organizations such as IRC have similar difficulties in conducting prescribed burns due to difficulties with permitting and obtaining the necessary permissions as well as hazard insurance limitations (Gann 2013, pers. comm.). Few private landowners have the means and/or desire to implement prescribed fire on their property, and doing so in a fragmented urban environment is logistically difficult and may be costly. One of the few privately owned pine rocklands that is successfully managed with prescribed burning is Pine Ridge Sanctuary, located in a more agricultural (less urban) matrix of Miami-Dade, which was last burned in November 2010 (Glancy 2013, pers. comm.) and retains populations of both *Sideroxylon reclinatum* ssp. *austrofloridense* and *Chamaesyce deltoidea* ssp. *pinetorum*. Similarly, extant populations of *Dalea carthagenensis* var. *floridana* within the privately owned Charles Deering Estate and County-owned Crandon Park are managed with fire.

Conservation Efforts To Reduce the Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Miami-Dade County Environmentally Endangered Lands (EEL) Covenant Program: In 1979, Miami-Dade County enacted the Environmentally Endangered Lands (EEL) Covenant Program, which reduces taxes for private landowners of natural forest communities (NFCs), such as pine rocklands and tropical hardwood hammocks, who agree not to develop their property and manage it for a period of 10 years, with the option to renew for additional 10-year periods (Service 1999, p. 3–177). Although these temporary conservation easements provide valuable protection for their duration, they are not considered under Factor D, below, because they are voluntary agreements and not regulatory in nature. Miami-Dade County currently has approximately 59 pine rockland properties enrolled in this program, preserving 69.4 ha (172 ac) of pine rockland habitat (Johnson 2012, pers. comm.). The program also has approximately 21 rockland hammocks properties enrolled in this program, preserving 20.64 ha (51 ac) of rockland hammock habitat (Joyner 2013b, pers. comm.). The vast majority of these properties are small, and many are in need of habitat management such as prescribed fire and removal of nonnative, invasive plants. Thus, while EEL covenant lands have the potential to provide valuable habitat for these plants and reduce threats in the near term, the actual effect of these conservation lands is largely determined by whether individual land owners follow prescribed EEL management plans and NFC regulations (see ''Local'' under the *Factor D* discussion, below).

Fee Title Properties: In 1990, Miami-Dade County voters approved a 2-year property tax to fund the acquisition, protection, and maintenance of natural areas by the EEL Program. The EEL Program purchases and manages natural lands for preservation. Land uses deemed incompatible with the protection of the natural resources are prohibited by current regulations; however, the County Commission ultimately controls what may happen with any County property, and land use changes may occur over time (Gil 2013, pers. comm.). To date, the Miami-Dade County EEL Program has acquired a total of approximately 313 ha (775 ac) of pine rockland and 95 ha (236 ac) of rockland hammocks (Guerra 2015, pers. comm.; Gil 2013, pers. comm.). The EEL Program also manages approximately 314 ha (777 ac) of pine rocklands and 639 ha (1,578 ac) of rockland hammocks owned by the Miami-Dade County Parks, Recreation and Open Spaces Department, including some of the largest remaining areas of pine rockland habitat on the Miami Rock Ridge outside of ENP (*e.g.,* Larry and Penny Thompson Park, Zoo Miami pinelands, and Navy Wells Pineland Preserve), and some of the largest remaining areas of rockland hammocks (*e.g.,* Matheson Hammock Park, Castellow Hammock Park, and Deering Estate Park and Preserves).

Conservation efforts in Miami's EEL Preserves have been underway for many years. In Miami-Dade County, conservation lands are and have been monitored by FTBG and IRC, in coordination with the EEL Program, to assess habitat status and determine any changes that may pose a threat to or alter the abundance of these species. Impacts to habitat via nonnative species and natural stochastic events are monitored and actively managed in areas where the taxon is known to occur. These programs are long-term and ongoing in Miami-Dade County; however, programs are limited by the availability of annual funding. In particular, fire management remains inadequate at many sites.

Since 2005, the Service has funded IRC to facilitate restoration and management of privately owned pine rockland habitats in Miami-Dade County. These programs included prescribed burns, nonnative plant control, light debris removal, hardwood management, reintroduction of pines where needed, and development of management plans. One of these programs, called the Pine Rockland Initiative, includes 10-year cooperative agreements between participating landowners and the Service/IRC to ensure restored areas will be managed appropriately during that time. Although most of these objectives have been achieved, IRC has not been able to conduct the desired prescribed burns, due to logistical difficulties as discussed above (see ''Fire Management,'' above).

Connect To Protect Program: FTBG, with the support of various Federal, State, local, and nonprofit organizations, has established the ''Connect To Protect Network.'' The objective of this program is to encourage widespread participation of citizens to create corridors of healthy pine rocklands by planting stepping stone gardens and rights-of-way with native pine rockland species, and restoring isolated pine rockland fragments. By doing this, FTBG hopes to increase the probability that pollination and seed dispersal vectors can find and transport seeds and pollen across developed areas that separate pine rockland fragments to improve gene flow between fragmented plant populations and increase the likelihood that these plants will persist over the long term. Although these projects may serve as valuable components toward the conservation of pine rockland species and habitat, they are dependent on continual funding, as well as participation from private landowners, both of which may vary through time.

National Park Service Lands: The NPS General Management Plans (GMP) for ENP (NPS 2015) and BCNP (BCNP 2008) serve to protect, restore, and maintain natural and cultural resources at the ecosystem level. Although these GMPs are not regulatory, and their implementation is not mandatory, the Plans include conservation measures for *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* or *Dalea carthagenensis* var. *floridana*. The GMPs for ENP and BCNP are both currently being implemented, specifically; prescribed fire is now being actively administered on a cyclic basis at both sites. In ENP, restoration continues throughout the Hole-in-the-Donut region of Long Pine Key, which is resulting in resurgence of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* and *Chamaesyce*

deltoidea ssp. *pinetorum* within the Park.

Summary of Factor A

Habitat loss, fragmentation and degradation, and associated pressures from increased human population are major threats to the four plants; these threats are expected to increase as remaining pine rocklands and other habitats are lost to development, placing these plants at greater risk. *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* may be impacted when pine rocklands are converted to other uses or when lack of fire causes the conversion to hardwood hammocks or other unsuitable habitats. On public lands, including NPS lands and Miami-Dade County-owned lands, implementation of prescribed fire has not been sufficient because of legal constraints (permitting requirements) and inadequate funding. Any populations of these four plants found on private property could be destroyed due to development. Although efforts are being made to conserve natural areas and apply prescribed fire, most pine rocklands remain in poor fire condition, and the long-term effects of large-scale and wide-ranging habitat modification, destruction, and curtailment will last into the future, while ongoing habitat loss due to population growth, development, and agricultural conversion continues to pose a threat to these species outside of conservation lands. Therefore, based on the best information available, we have determined that the threats to *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* from habitat destruction, modification, or curtailment are occurring throughout the entire range of these species and are expected to continue into the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The best available data do not indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* or *Dalea carthagenensis* var. *floridana.* Threats to these plants related to other aspects of recreation and similar human activities (*i.e.,* not related to overutilization) are discussed under Factor E, below.

Factor C. Disease or Predation

Scale insects (Coccoidea) and *Cassytha filiformis* (love vine, a parasitic plant) infestations have been noted as parasites for *Dalea carthagenensis* var. *floridana* (Maschinski *et al.* 2015, p. 39) and may also influence populations of other listed pine rockland plant species. However, the best available data do not indicate that disease or predation is a threat to *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* or *Dalea carthagenensis* var. *floridana.*

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether threats to these plants discussed under the other factors are continuing due to an inadequacy of existing regulatory mechanisms. 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 the Service to consider relevant Federal, State, and tribal laws, regulations, and other such binding legal mechanisms that may ameliorate or exacerbate any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species.

Having evaluated the impact of the threats as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms ameliorate or exacerbate the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing Federal, State, and local regulatory mechanisms to determine whether they effectively reduce or remove threats to *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum* or *Dalea carthagenensis* var. *floridana.*

Federal

Lands managed by the National Park Service are subject to the NPS Organic Act of 1916, which provides that the ''fundamental purpose'' of those lands ''is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations'' (16 U.S.C. 1). Most units of the National Park System also have their own specific enabling legislation, but the 1970 General Authorities Act makes it clear that all units are united into a single National Park System. Furthermore, no activities shall be allowed ''in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress'' (16 U.S.C. 1a–1).

Populations of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* within ENP and BCNP are protected by NPS regulations at 36 CFR 2.1, which prohibit visitors from harming or removing plants, listed or otherwise, from ENP or BCNP. However, the regulations do not address actions taken by NPS that cause mortality of individuals, or habitat loss or modification to development or sea level rise. NPS regulations do not require the application of prescribed fire or voluntary recovery actions for listed species.

Sideroxylon reclinatum ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* have no Federal regulatory protection in their known occupied and suitable habitat outside of ENP or BCNP. These species may occur (we do not have recent surveys) on Federal lands within the Richmond Pine Rocklands, including lands owned by the U.S. Coast Guard and the National Oceanic and Atmospheric Association (NOAA; small portion of Martinez Pineland). There are no Federal protections for these four species on these properties. Outside of NPS lands, these plants occur primarily on State- or County-owned and private land (see Tables 1 through 4, above), and development of these areas will likely require no Federal permit or other authorization, *e.g.* these projects are generally not analyzed under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*).

State

Sideroxylon reclinatum ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* are listed on the State of Florida's Regulated Plant Index (Index) as endangered under chapter 5B–40, Florida Administrative Code. This listing provides habitat protection

through the State's Development of Regional Impact process, which discloses impacts from projects and provides limited regulatory protection for State-listed plants on private lands.

Florida Statutes 581.185 sections (3)(a) and (3)(b) prohibit any person from willfully destroying or harvesting any species listed as endangered or threatened on the Index or growing such a plant on the private land of another, or on any public land, without first obtaining the written permission of the landowner and a permit from the Florida Department of Plant Industry. The statute further provides that any person willfully destroying or harvesting; transporting, carrying, or conveying on any public road or highway; or selling or offering for sale any plant listed in the Index as endangered must have a permit from the State at all times when engaged in any such activities. Further, Florida Statutes 581.185 section (10) provides for consultation similar to section 7 of the Act for listed species, by requiring the Department of Transportation to notify the FDACS and the Endangered Plant Advisory Council of planned highway construction at the time bids are first advertised, to facilitate evaluation of the project for listed plant populations, and to provide ''for the appropriate disposal of such plants'' (*i.e.,* transplanting).

However, this statute provides no substantive protection of habitat at this time. Florida Statutes 581.185 section (8) waives State regulation for certain classes of activities for all species on the Index, including the clearing or removal of regulated plants for agricultural, forestry, mining, construction (residential, commercial, or infrastructure), and fire-control activities by a private landowner or his or her agent.

Local

In 1984, section 24–49 of the Code of Miami-Dade County established regulation of County-designated NFCs, which include both pine rocklands and tropical hardwood hammocks. These regulations were placed on specific properties throughout the county by an act of the Board of County Commissioners in an effort to protect environmentally sensitive forest lands. The Miami-Dade County Department of Regulatory and Economic Resources (RER) has regulatory authority over NFCs and is charged with enforcing regulations that provide partial protection on the Miami Rock Ridge. Miami-Dade Code typically allows up to 20 percent of a pine rockland designated as NFC to be developed, and requires that the remaining 80 percent be placed under a perpetual covenant. In certain circumstances, where the landowner can demonstrate that limiting development to 20 percent does not allow for ''reasonable use'' of the property, additional development may be approved. NFC landowners are also required to obtain an NFC permit for any work, including removal of nonnatives within the boundaries of the NFC on their property. The NFC program is responsible for ensuring that NFC permits are issued in accordance with the limitations and requirements of the code and that appropriate NFC preserves are established and maintained in conjunction with the issuance of an NFC permit. The NFC program currently regulates approximately 600 pine rockland or pine rockland/hammock properties, comprising approximately 1,200 ha (3,000 ac) of habitat (Joyner 2013a, pers. comm.).

Although the NFC program is designed to protect rare and important upland (non-wetlands) habitats in south Florida, it has limitations for protection of the four plants discussed in this rule. For example, in certain circumstances where landowners can demonstrate that limiting development to 20 percent does not allow for ''reasonable use'' of the property, additional development may be approved. Furthermore, Miami-Dade County Code provides for up to 100 percent of the NFC to be developed on a parcel in limited circumstances for parcels less than 2.02 ha (5 ac) in size and only requires coordination with the landowner if they plan to develop property or perform work within the NFC designated area. As such, the majority of the existing private, forested NFC parcels is isolated fragments, without management obligations or preserve designation, as development has not been proposed at a level that would trigger the NFC regulatory requirements. Often, nonnative vegetation over time begins to dominate and degrade the undeveloped and unmanaged NFC landscape until it no longer meets the legal threshold of an NFC, which requires the land to be dominated by native vegetation. When development of such degraded NFCs is proposed, Miami-Dade County Code requires delisting of the degraded areas as part of the development process. Property previously designated as NFC is removed from the list even before development is initiated because of the abundance of nonnative species, making it no longer considered to be jurisdictional or subject to the NFC protection requirements of Miami-Dade County Code (Grossenbacher 2013, pers. comm.).

Summary of Factor D

Currently, *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* are found on Federal, State and County lands. NPS regulations provide protection at ENP and BCNP. While these regulations do not mandate active conservation measures, these two sites continue to support the largest and best managed populations. State regulations provide protection against trade, but allow private landowners or their agents to clear or remove species on the Florida Regulated Plant Index. State Park regulations provide protection for plants within Florida State Parks. The NFC program in Miami is designed to protect rare and important upland (non-wetlands) habitats in south Florida; however, this regulatory strategy has several limitations (as described above) that reduce its ability to protect the four plants and their habitats.

Although many populations of the four plants are afforded some level of protection because they are on public conservation lands, especially Federal lands, existing regulatory mechanisms vary in strength and scope, and do not provide substantive protection of habitat at this time. They have not led to a sufficient reduction of threats posed to these plants by a wide array of sources (see discussions under Factors A and E in this rule).

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other natural or manmade factors affect *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* to varying degrees. Specific threats to these plants included in this factor consist of the spread of nonnative invasive plants, potentially incompatible management practices (such as mowing), direct impacts to plants from recreation and other human activities, small population size and isolation, climate change, and the related risks from environmental stochasticity (extreme weather) on small populations. Each of these threats and its specific effect on these species are discussed in detail below.

Nonnative Plant Species

Nonnative, invasive plants compete with native plants for space, light, water, and nutrients, and make habitat

conditions unsuitable for *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana,* which prefer open conditions. The control of nonnative plants is one of the most important conservation actions for the four plants and a critical part of habitat maintenance (Bradley and Gann 1999, pp. 13, 71–72). However, nonnative species control efforts require that personnel be highly familiar with pine rocklands and associated habitats in order to avoid impacts (*e.g.,* improper herbicide use, species misidentification) to native species.

Nonnative plants have significantly affected pine rocklands and negatively impact all occurrences of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* to some degree (Bradley 2006, pp. 25–26; Bradley and Gann 1999, pp. 18–19; Bradley and Saha 2009, p. 25; Bradley and van der Heiden 2013, pp. 12–16). As a result of human activities, at least 277 taxa of nonnative plants have invaded pine rocklands throughout south Florida (Service 1999, p. 3–175). *Schinus terebinthifolius* (Brazilian pepper), *Neyraudia neyraudiana* (Burma reed), and *Lygodium microphyllum* (Old World climbing fern) affect these species (Bradley and Gann 1999, pp. 13, 72). Brazilian pepper, a nonnative tree, is the most widespread and one of the most invasive species. It forms dense thickets of tangled, woody stems that completely shade out and displace native vegetation (Loflin 1991, p. 19; Langeland and Craddock Burks 1998, p. 54).

Nonnative plants in pine rocklands can affect the characteristics of a fire when it occurs. Historically, pine rocklands had an open, low understory where natural fires remained patchy with low temperature intensity. *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* thrive under this fire regime. However, dense infestations of *Neyraudia neyraudiana* and *Schinus terebinthifolius* cause higher fire temperatures and longer burning periods.

Nonnative species occur throughout the ranges of the four plants. In ENP and BCNP, invasives tend to be fewer due to the insularity of these sites and the NPS's control programs. Nevertheless, most areas require annual treatments to remove incipient invasions. Management of nonnative, invasive plants in pine rocklands in Miami-Dade County is further complicated because the vast majority of pine rocklands are small, fragmented areas bordered by urban development. Areas near managed pine rockland that contain nonnative species can act as a seed source of nonnatives, allowing them to continue to invade the surrounding pine rockland (Bradley and Gann 1999, p. 13).

Nonnative plant species are also a concern on private lands, where often these species are not controlled due to associated costs, lack of interest, or lack of knowledge of detrimental impacts to the ecosystem. Undiscovered populations of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* on private lands could certainly be at risk. Overall, active management is necessary to control for nonnative species and to protect unique and rare habitats where these plants occur (Snyder *et al.* 1990, p. 273).

Mowing

While no studies have investigated the effect of mowing on *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* or *Dalea carthagenensis* var. *floridana,* research has been conducted on the federally endangered *Linum carteri* var. *carteri* (Carter's small-flowered flax), which also occurs in pine rocklands. The study found significantly higher densities of plants at the mown sites where competition with other plants is decreased (Maschinski *et al.* 2007, p. 56). However, plants growing on mown sites were shorter, which may affect fruiting magnitude. While mowing did not usually kill adult plants, it could delay reproduction if it occurred prior to plants reaching reproductive status (Maschinski *et al.* 2007, pp. 56–57). If such mowing occurs repeatedly, reproduction of those plants would be entirely eliminated. Maschinski *et al.* (2008, p. 28) recommended adjusting the timing of mowing to occur at least 3 weeks after flowering is observed to allow a higher probability of adults setting fruit prior to the mowing event. With flexibility and proper instructions to land managers and ground crews, mowing practices could be implemented in such a way as to scatter seeds and reduce competition with little effect on population reproductive output for the year (Maschinski *et al.* 2008, p. 28). The exact impacts of mowing also depend on the timing of rainfall prior to and following mowing, and the numbers of plants in the population that have reached a reproductive state.

Recreation and Other Human Activities

Recreational use of off-road vehicles (ORVs) is a threat to *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* and *Dalea carthagenensis* var. *floridana* occurrences within BCNP (K. Bradley *et al.* 2013, p. 3). Operators frequently veer off established trails, and plants can be harmed or destroyed (Bradley and Gann 1999, p. 43). BCNP updated its Off Road Vehicle Management Plan in 2012, in response to extreme resource damage caused by ORVs. BCNP manages ORV access using a permit system, regulations, and designated trails. However, there are over 1,000 miles of ORV trails in BCNP, and only one enforcement officer (Pernas 2016, pers. comm.), making enforcement of designated ORV trails a challenge. Current aerial imagery from the Lostman's Pine area of BCNP, where *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* and *Dalea carthagenensis* var. *floridana* occur, shows a criss-cross pattern of multiple ORV trails through the area. The Service is working with BCNP to determine the extent to which ORVs are affecting all three species at this site, particularly in regards to *Digitaria pauciflora,* since it is one of only two sites where the species is known to exist. Damage from ORV use has also been documented for *Dalea carthagenensis* var. *floridana* within the Charles Deering Estate (J. Possley 2008 and 2009, pers. comm.).

Dalea carthagenensis var. *floridana* at the RHMP is also impacted by illegal mountain biking (Bradley and Gann 1999, pp. 43–45). In the past, this pineland fragment was heavily used by mountain bikers. In response, Miami-Dade County has erected fencing to protect this site, which appears to have reduced this threat (Bradley and Gann 1999, p. 43).

Effects of Small Population Size and Isolation

Endemic species whose populations exhibit a high degree of isolation are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Species that are restricted to geographically limited areas are inherently more vulnerable to extinction than widespread species because of the increased risk of genetic bottlenecks, random demographic fluctuations, effects of climate change, and localized catastrophes such as hurricanes and disease outbreaks (Mangel and Tier

1994, p. 607; Pimm *et al.* 1988, p. 757). These problems are further magnified when populations are few and restricted to a very small geographic area, and when the number of individuals is very small. Populations with these characteristics face an increased likelihood of stochastic extinction due to changes in demography, the environment, genetics, or other factors (Gilpin and Soule 1986, pp. 24–34).

Small, isolated populations, such as those in fragmented habitat, often exhibit reduced levels of genetic variability, although the ultimate effect of these changes is dependent on a plant's specific life history, reproductive system, and interaction with pollinators and dispersal vectors (which may themselves be affected by fragmentation) (Young *et al.* 1996, p. 413). While research results clearly indicate that isolation/fragmentation has population genetic consequences for plants, consequences are varied and for some species there may be a ''fragmentation threshold'' below which genetic variation is not lost (Young *et al.* 1996, p. 416). No such studies have been conducted for *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana,* so whether these plants exhibit such a threshold is not known. Reduced genetic variability generally diminishes a species' capacity to adapt and respond to environmental changes, thereby decreasing the probability of long-term persistence (*e.g.,* Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361). Very small plant populations may experience reduced reproductive vigor due to ineffective pollination or inbreeding depression. Isolated individuals have difficulty achieving natural pollen exchange, which limits the production of viable seed. The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic (interaction of two or more components) effects with other threats, such as those discussed above (Factors A and C). Tables 1, 2, 3, and 4 above, list the population sizes and the geographic ranges for *S. reclinatum* ssp. *austrofloridense, D. pauciflora, C. deltoidea* ssp. *pinetorum,* and *D. carthagenensis* var. *floridana.* For example, Table 2 lists *Digitaria pauciflora* as having two extant populations (ENP and BCNP), one estimated at 100,000–200,000 plants (Maschinski and Lange 2015, p.18) and the other with greater than 10,000 plants (K. Bradley 2007, pers. comm.). The Service does not consider these as small populations; however, a large wildfire or severe flooding could be catastrophic. As shown in 2016, *D. pauciflora* was impacted by fire in ENP and flooding in ENP and BCNP, proving that the small geographic extent of the existing populations is not sufficient to eliminate the risk posed by large-scale disturbances.

Effects of Climate Change

Climatic changes, including sea level rise, are major threats to the flora of south Florida, including *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana.* Our analyses under the Act include consideration of ongoing and projected changes in climate. With regard to our analysis for *S. reclinatum* ssp. *austrofloridense, D. pauciflora, C. deltoidea* ssp. *pinetorum,* and *D. carthagenensis* var. *floridana,* downscaled projections suggest that sea level rise is the largest climate-driven challenge to low-lying coastal areas in the subtropical ecoregion of southern Florida (U.S. Climate Change Science Program (USCCSP) 2008, pp. 5–31, 5–32).

Global sea level has increased by 0.20 to 0.23 m (8 to 9 in) since 1880, with the rate of increase over the past 20 years doubling (Service 2017, p. 5). An average 0.08 m (3 in) increase in overall global sea level rise has occurred between 1992 and 2015 (National Aeronautics and Space Administration Jet Propulsion Laboratory 2015, p. 2). This is equivalent to the Florida coastline subsiding at a rate of 0.04 inches a year (Service 2017, p. 6). The long-term trend in sea level rise at the National Oceanic and Atmospheric Association (NOAA) Key West Station, Florida shows a 0.0024 m (0.09 in) increase per year from 1913 to 2015 of the mean high water line. The NOAA Vaca Key Station (City of Marathon) shows a 0.0035 m (0.14 in) per year sea level rise between 1971 (start of data collection) to 2015 (NOAA 2017a). Mean high water line is defined as, ''The line on a chart or map which represents the intersection of the land with the water surface at the elevation of mean high water'' (NOAA National Ocean Service [NOS]) 2017).

While the sea level rise rate for Florida has been equivalent to that experienced globally, recent analysis is now indicating an accelerated rate for the eastern United States above that of the global rate (NOAA 2017b, p. 25; Carter *et al.* 2014, pp. 401–403; Park and Sweet 2015, entire). The global trend is currently on the higher-end trajectory of the scenarios, projecting a sea level rise of 2.5 to 3.0 m by 2100. NOAA (2017b, p. 21) is recommending the use of the higher end estimates for future projections. The accelerated sea level rise in south Florida is being attributed to shifts in the Florida Current due to: (a) Added ocean mass brought on by the melting Antarctic and Greenland ice packs, and (b) thermal expansion from the warming ocean (Park and Sweet 2015, entire article; Rahmstorf *et al.* 2015, entire article; NOAA 2017b, p. 14; Deconto and Pollard, 2016, p. 596). For this reason, Walsh *et al.* (2014, pp. 32–35) recommended adding approximately 15 percent to the earlier IPCC (2013, entire) global mean sea level rise projections when using projections for southern Florida if the projections used do not yet model the accelerated rate (Southeast Florida Regional Climate Change Compact [Compact] 2015, p. 35; Park and Sweet, 2015, entire article).

Other processes expected to be affected by projected warming include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity) (discussed more specifically under ''Environmental Stochasticity,'' below). The Massachusetts Institute of Technology (MIT) modeled several scenarios combining various levels of sea level rise, temperature change, and precipitation differences with human population growth, policy assumptions, and conservation funding changes (see ''Alternative Future Landscape Models,'' below). All of the scenarios, from small climate change shifts to major changes, indicate significant effects on coastal Miami-Dade County.

In the United States, the average temperatures have increased by 0.77 to 1.1 °C (1.3 to 1.9 °F) since record keeping began in 1895 (Service 2017, p. 2). The decade from 2000 to 2009 is documented as the warmest since record keeping began in 1895 (Service 2017, p. 2). The average temperatures in south Florida have increased 0.83 °C (1.5 °F) or more since 1991 (Service 2017, p. 2). Because of the current condition of human-induced emissions (that is, the pattern of continued release of greenhouse gas (GHG) added to those already occurring in the atmosphere), increases in surface air temperature continue to rise. Even if there was an immediate and aggressive reduction to all GHG emissions caused by humans, there would still be expected continued increases in surface air temperature (IPCC 2013; pp. 19–20).

Precipitation patterns are also changing. The National Climate

Assessment (NCA) reports that average precipitation has increased by 5 to 10 percent since 1900 in south Florida. Shifts in seasonal rainfall events as well as increases in average precipitation are currently being documented (Service 2017, pp. 405). The south Florida dry season (November through April) has become wetter, and the rainy season (May through October) has become drier. Current projections show this trend to continue.

Heavy downpours are currently increasing and have especially increased over the last 30 to 50 years in Florida. There is currently a 27 percent increase in the frequency and intensity of heavy downpours since the 1970s (Service 2017, p. 4). Increased inland flooding is predicted during heavy rain events in low-lying areas. With worsening storms, storm surges along coastlines become stronger and push inland further. Inundation of soils from storm surges can cause saltwater intrusion. More powerful storm surges exacerbate effects of the increased sea level along shorelines. Increased incidences of inland flooding and of low-lying areas are being documented regionally and locally (Staletovich 2016; Sheridan 2015).

Decades prior to inundation, pine rocklands are likely to undergo vegetation shifts related to climate change, triggered by changes to hydrology (wetter), salinity (higher), and increasing vulnerability to storm surge (pulse events causing massive erosion and salinization of soils) (Saha *et al.* 2011, pp. 169–184). Hydrology has a strong influence on plant distribution in these and other coastal areas (IPCC 2008, p. 57). Such communities typically grade from saltwater to brackish to freshwater species. From the 1930s to 1950s, increased salinity of coastal waters contributed to the decline of cabbage palm forests in southwest Florida (Williams *et al.* 1999, pp. 2056–2059), expansion of mangroves into adjacent marshes in the Everglades (Ross *et al.* 2000, pp. 101, 111), and loss of pine rockland in the Keys (Ross *et al.* 1994, pp. 144, 151–155). In one Florida Keys pine rockland with an average elevation of 0.89 m (2.9 ft), Ross *et al.* (1994, pp. 149–152) observed an approximately 65 percent reduction in an area occupied by South Florida slash pine over a 70-year period, with pine mortality and subsequent increased proportions of halophytic (salt-loving) plants occurring earlier at the lower elevations. During this same time span, local sea level had risen by 15 cm (6.0 in), and Ross *et al.* (1994, p. 152) found evidence of groundwater and soil water salinization. Extrapolating this situation to pine rocklands on the mainland is not straightforward, but suggests that similar changes to species composition could arise if current projections of sea level rise occur and freshwater inputs are not sufficient to prevent salinization. Furthermore, Ross *et al.* (2009, pp. 471–478) suggested that interactions between sea level rise and pulse disturbances (*e.g.,* storm surges) can cause vegetation to change sooner than projected based on sea level rise alone. Alexander (1953, pp. 133–138) attributed the demise of pinelands on northern Key Largo to salinization of the groundwater in response to sea level rise. Patterns of human development will also likely be significant factors influencing whether natural communities can move and persist (IPCC 2008, p. 57; USCCSP 2008, p. 7–6).

The Science and Technology Committee of the Miami-Dade County Climate Change Task Force (Wanless *et al.* 2008, p. 1) recognized that significant sea level rise is a very real threat to the near future for Miami-Dade County. In a January 2008 statement, the committee warned that sea level is expected to rise at least 0.9 to 1.5 m (3 to 5 ft) within this century (Wanless *et al.* 2008, p. 3). With a 0.9 to 1.2 m (3 to 4 ft) rise in sea level (above baseline) in Miami-Dade County, spring high tides would be at about 6 to 7 ft; freshwater resources would be gone; the Everglades would be inundated on the west side of Miami-Dade County; the barrier islands would be largely inundated; storm surges would be devastating; and landfill sites would be exposed to erosion, contaminating marine and coastal environments. Freshwater and coastal mangrove wetlands will not keep up with or offset sea level rise of 2 ft per century or greater. With a 5-ft rise (spring tides at nearly +8 ft), the land area of Miami-Dade County will be extremely diminished (Wanless *et al.* 2008, pp. 3–4).

Drier conditions and increased variability in precipitation associated with climate change are expected to hamper successful regeneration of forests and cause shifts in vegetation types through time (Wear and Greis 2012, p. 39). Although it has not been well studied, existing pine rocklands have probably been affected by reductions in the mean water table. Climate changes are also forecasted to extend fire seasons and the frequency of large fire events throughout the Coastal Plain (Wear and Greis 2012, p. 43). These factors will likely cause an increase in wildfires and exacerbate complications related to prescribed burning (*i.e.,* less predictability related to rainfall, fuel moisture, and winds) or other management needed to restore and maintain habitat for the four plants. While restoring fire to pine rocklands is essential to the long-term viability of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* populations, increases in the scale, frequency, or severity of wildfires could have negative effects on these plants considering their general vulnerability due to small population size, restricted range, few occurrences, and relative isolation. Big, hot wildfires can destroy essential habitat features of pine rockland habitat. In addition, hot burns with long residence times (which are more likely under wildfire conditions) can also sterilize the soil seed bank and cause a demographic crash in plant populations.

Alternative Future Landscape Models

To accommodate the large uncertainty in sea level rise projections, researchers must estimate effects from a range of scenarios. Various model scenarios developed at MIT and GeoAdaptive Inc. have projected possible trajectories of future transformation of the south Florida landscape by 2060 based upon four main drivers: Climate change, shifts in planning approaches and regulations, human population change, and variations in financial resources for conservation. The scenarios do not account for temperature, precipitation, or species' habitat shifts due to climate change, and no storm surge effects are considered. The current MIT scenarios range from 0.09 to 1.0 m (0.3 to 3.3 ft) of sea level rise by 2060 (Vargas-Moreno and Flaxman 2010, pp. 1–6).

Based on the most recent estimates of anticipated sea level rise, the upward trend in recent projections toward the higher range of earlier sea level rise estimates (discussed above), and the data available to us at this time, we evaluated potential effects of sea level rise using the current ''high'' range MIT scenario as well as comparing elevations of remaining pine rockland fragments and extant and historical occurrences of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana.* The ''high'' range (or ''worst case'') MIT scenario assumes high sea level rise (1 m (3.3 ft) by 2060), low financial resources, a 'business as usual' approach to planning, and a doubling of human population.

The rate of sea level rise will increase as time passes. This is due to atmospheric and ocean warming and the

thermal expansion properties of water. In sea level rise models, the rate of sea level rise is projected to increase dramatically around mid-century.

Most populations of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* and *Chamaesyce deltoidea* ssp. *pinetorum* occur at elevations less than 2 m (6.6 ft) above sea level, making these species highly susceptible to increased storm surges and related impacts associated with sea level rise. Areas of the Miami Rock Ridge in Miami-Dade County (located to the east of ENP and BCNP) are higher elevation (maximum of 7 m (22 ft) above sea level) than those in BCNP (FNAI 2010, p. 62). However, plant communities along south Florida's low-lying coasts are organized along a mild gradient in elevation, transitioning from mangroves at sea level to salinity-intolerant interior habitats, including pine rocklands and hardwood hammocks within an elevation change of 2 m (6.5 ft) above sea level. As a result, a rise of 1 m (3.3 ft) in sea level is expected to render coastal systems susceptible to increased erosion and cause these areas to transition from upland forest habitats to saline wetland habitats. Prior to the onset of sustained inundation, there will be irreversible changes in vegetation composition within these habitats. Shifts in habitat toward hydric and saline ecosystems may occur decades in advance of full inundation, rendering the habitat unsuitable for salt-intolerant species, including *S. reclinatum* ssp. *austrofloridense, D. pauciflora, C. deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* (Saha *et al.* 2011, pp. 169–184). As interior habitats become more saline, there will be a reduction in freshwater inflows to the estuarine portions of the Everglades and BCNP, accelerating losses in salinity-intolerant coastal plant communities (Saha *et al.* 2011, pp. 169–184); such as *S. reclinatum* ssp. *austrofloridense, D. pauciflora, C. deltoidea* ssp. *pinetorum,* or *D. carthagenensis* var. *floridana.*

Actual impacts may be greater or less than anticipated based upon the high variability of factors involved (*e.g.,* sea level rise, human population growth) and assumptions made, but based on the current ''high'' range MIT scenario, pine rocklands, marl prairies, and associated habitats along the coast in central and southern Miami-Dade County would become inundated. The ''new'' sea level would occur at the southern end of the Miami Rock Ridge (the eastern edge of the Everglades). However, in decades prior to the fully anticipated sea level rise, changes in the water table and increased soil salinity from partial inundation and storm surge will result in vegetation shifts within BCNP, ENP, and conservation lands on the southern Miami Rock Ridge. Inundation will result in pine rocklands gaining increased marl prairie characteristics. Marl prairies, in turn, will transition to sawgrass or more hydric conditions, due to increased inundation. As a result, species such as *Digitaria pauciflora* and *Sideroxylon reclinatum* ssp. *austrofloridense,* which are most abundant within the ecotone between pine rocklands and marl prairies, will gradually decline as these habitat types merge and eventually disappear. Under this scenario, by 2060, all extant populations of *Digitaria pauciflora,* as well as the largest populations of *Sideroxylon reclinatum* ssp. *austrofloridense* and *Dalea carthagenensis* var. *floridana,* would likely be lost or significantly impacted by shifts in vegetation communities. Populations of *Sideroxylon reclinatum* ssp. *austrofloridense, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* would likely remain only at the highest elevations along the Miami Rock Ridge. In addition, many existing pine rockland fragments are projected to be developed for housing as the human population grows and adjusts to changing sea levels under this scenario.

Further direct losses to extant populations of all four plants are expected due to habitat loss and modification from sea level rise through 2100. We analyzed existing sites that support populations of the four plants using the National Oceanic and Atmospheric Administration (NOAA) Sea Level Rise and Coastal Impacts viewer. Below we discuss general implications of sea level rise within the range of projections discussed above on the current distribution of these species. The NOAA tool uses 1-foot increments. Our analysis is based on 0.91 m (3 ft) and 1.8 m (6 ft) of sea level rise.

Based on a higher sea level rise of 1.8 m (6 ft), as projected by NOAA, much larger portions of urban Miami-Dade County, including both extant populations of *Digitaria pauciflora* in ENP and BCNP, as well as conservation areas, such as Navy Wells Pineland Preserve, will be inundated by 2100. As a result, the species would be extinct. Several extant occurrences of *Sideroxylon reclinatum* ssp. *austrofloridense, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* would also be lost. The western part of urban Miami-Dade County would also be inundated (barring creation of sea walls or other barriers), creating a virtual island of the Miami Rock Ridge.

Following a 1.8-m (6 ft) rise in sea level, approximately 75 percent of presently extant pine rocklands on the Miami Rock Ridge would still remain above sea level. However, an unknown percentage of remaining pine rockland fragments would be negatively impacted by water table and soil salinization, which would be further exacerbated due to isolation from mainland fresh water flows.

Projections of sea level rise above 1.8 m (6 ft) indicate that very little pine rockland would remain, with the vast majority either being inundated or experiencing vegetation shifts, resulting in the extirpation of all known populations of *Digitaria pauciflora, Sideroxylon reclinatum* ssp. *austrofloridense, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana.*

Environmental Stochasticity

Endemic species whose populations exhibit a high degree of isolation and narrow geographic distribution, such as *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea pinetorum,* and *Dalea carthagenensis* var. *floridana,* are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Small populations of species, without positive growth rates, are considered to have a high extinction risk from site-specific demographic and environmental stochasticity (Lande 1993, pp. 911–927).

The climate of southern Florida is driven by a combination of local, regional, and global events, regimes, and oscillations. There are three main ''seasons'': (1) The wet season, which is hot, rainy, and humid from June through October; (2) the official hurricane season that extends one month beyond the wet season (June 1 through November 30), with peak season being August and September; and (3) the dry season, which is drier and cooler, from November through May. In the dry season, periodic surges of cool and dry continental air masses influence the weather with short-duration rain events followed by long periods of dry weather.

Florida is considered the most vulnerable State in the United States to hurricanes and tropical storms (Stefanova *et al.* 2017, pp. 1–4) Based on data gathered from 1856 to 2008, Florida had the highest climatological probabilities of coastal States being impacted by a hurricane or major hurricane in all years over the 152-year

timespan, with a 51 percent probability of a hurricane (Category 1 or 2) and a 21 percent probability of a major hurricane (Category 3 or higher) (Klotzbach and Gray 2009, p. 28). From 1856 to 2015, Florida actually experienced 109 hurricanes and 36 major hurricanes. Given the low population sizes and restricted ranges of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* within south Florida, these species are at substantial risk from hurricanes, storm surges, and other extreme weather. Depending on the location and intensity of a hurricane or other severe weather event, it is possible that the plants could become extirpated or extinct.

Hurricanes, storm surge, and extreme high tide events are natural events that can negatively impact these four plants. Hurricanes and tropical storms can modify habitat (*e.g.,* through storm surge) and have the potential to destroy entire populations, physically washing them away or leaving soil too saline for them to persist. Climate change may lead to increased frequency and duration of severe storms (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015). *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* experienced these disturbances historically, but had the benefit of more abundant and contiguous habitat to buffer them from extirpations. With most of the historical habitat having been destroyed or modified, the few remaining populations of these species could face local extirpations due to stochastic events.

Other processes to be affected by climate change, related to environmental stochasticity, include temperatures, rainfall (amount, seasonal timing, and distribution), and storms (frequency and intensity). Temperatures are projected to increase by 2–5 °C (3.6–9 °F) for North America by the end of this century (IPCC 2013, pp. 5–8, 20). These factors will likely cause an increase in wildfires and exacerbate complications related to prescribed burning or other management needed to restore and maintain habitat for the four plants. Based upon modeling, Atlantic hurricane and tropical storm frequencies are expected to decrease (Knutson *et al.* 2008, pp. 1–21). By 2100, there should be a 10 to 30 percent decrease in hurricane frequency. Hurricane frequency is expected to drop due to more wind shear impeding initial hurricane development. However, hurricane winds are expected to increase by 5 to 10 percent, which will increase storm surge heights. This is due to more hurricane energy being available for intense hurricanes. In addition to climate change, weather variables are extremely influenced by other natural cycles, such as El Niño Southern Oscillation with a frequency of every 4–7 years, solar cycle (every 11 years), and the Atlantic Multi-decadal Oscillation. All of these cycles influence changes in Floridian weather. The exact magnitude, direction, and distribution of all of these changes at the regional level are difficult to project.

Freezing Temperatures

Occasional freezing temperatures that occur in south Florida pose a risk to *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana,* causing damage or death to individual plants. Under normal circumstances, occasional freezing temperatures would not result in a significant impact to populations of these plants; however, the small size of some populations means the loss from freezing events of even a few individuals can reduce the viability of the population.

Hydrology and Everglades Restoration

Hydrology is a key ecosystem component that affects rare plant distributions and their viability (Gann *et al.* 2006, p. 4). Historically, sheet flow from Shark River Slough and Taylor Slough did not reach the upland portions of Long Pine Key, but during the wet season increased surface water flow in sloughs generated a rise in ground water across the region (Gann *et al.* 2006, p. 4). Water flow through Long Pine Key was originally concentrated in marl prairies, traversing in a north-south direction; however, construction of the main ENP road dissected Long Pine Key in an east-west direction, thereby impeding sheet flow across this area (Gann *et al.* 2006, p. 4). Water was either impounded to the north of the main ENP road or diverted around the southern portion of Long Pine Key through Taylor Slough and Shark River Slough (Gann *et al.* 2006, p. 4). As artificial drainage became more widespread, however, regional groundwater supplies declined.

While projects designed to restore the historical hydrology of the Everglades and other natural systems in southern Florida (collectively known as the Comprehensive Everglades Restoration Plan (CERP)) are beneficial to the Everglades ecosystem, some may produce collateral impacts to extant pine rockland, marl prairies, and associated habitats within the region through inundation or increased hydroperiods. The effects of changes in regional hydrology through restoration may have impacts on the four plants and their habitats. Sadle (2012, pers. comm.) suggested various CERP projects (such as C–111 spreader canal; L–31N seepage barrier), specifically the operation of pumps and associated detention areas along the ENP boundary, may influence (through excessive water discharges) select portions of eastern Long Pine Key. Increased and longer-duration hydroperiods within the pine rockland and marl prairie habitats where these species occur may lead to a reduction in the amount of suitable habitat, a potential reduction in the area occupied and a reduction in the number of individuals found in ENP and BCNP. Conversely, Maschinski and Lange (2015, pp. 31–33) observed an increase in *Digitaria pauciflora* populations within ENP that may have been associated with drier conditions. In an effort to establish a baseline assessment of future hydrologic modifications, long-term monitoring transects and plots for *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* and *Chamaesyce deltoidea* ssp. *pinetorum* were established in Long Pine Key between 2003 and 2008 (Gann 2015, p. 169).

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Continued Existence

NPS, the Service, Miami-Dade County, and the State of Florida have ongoing nonnative plant management programs to reduce threats on public lands, as funding and resources allow. In Miami-Dade County, nonnative, invasive plant management is very active, with a goal to treat all publically owned properties at least once a year and more often in many cases. IRC and FTBG conducts research and monitoring in various natural areas within Miami-Dade County and the Florida Keys for various endangered plant species and nonnative, invasive species. For the four plants, monitoring detects declines that lead to small population size, changes in habitat due to sea level rise, and declines due to stochastic events. For nonnatives, monitoring is an integral part of efforts to detect and control invasive plant and animal species.

FTBG has provided 16,908 *Digitaria pauciflora* seeds, 730 *Chamaesyce deltoidea* ssp. *pinetorum* seeds (from within ENP), and 32,703 *Dalea carthagenensis* var. *floridana* seeds

(from multiple sites) to the National Center for Genetic Resources Preservation (NCGRP) for use in *ex situ* conservation and ecological studies (Lange 2016, pers. comm.).

Summary of Factor E

Threats from other natural or manmade factors to these four plants include nonnative, invasive plants; management practices (such as mowing); recreation (including ORV use), effects from small population size and isolation; limited geographic range; and stochastic events including hurricanes, storm surges, and wildfires. Additionally, these plants are particularly vulnerable to the effects of climate change, including sea level rise, as changes in the water table, increased soil salinity from partial inundation, and storm surge will likely result in vegetation shifts in the decades prior to the fully anticipated sea level rise. Some of these threats (*e.g.,* nonnative species) may be reduced on public lands due to active programs by Federal, State, and County land managers. Many of the remaining populations of these plants are small and geographically isolated, and genetic variability is likely low, increasing the inherent risk due to overall low resilience of these plants. The threats act together to impact populations of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana.*

Cumulative Effects of Threats

When two or more threats affect populations of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana,* the effects of those threats could interact or become compounded, producing a cumulative adverse effect that is greater than the impact of either threat alone. The most obvious cases in which cumulative adverse effects would be significant are those in which small populations (Factor E) are affected by threats that result in destruction or modification of habitat (Factor A), ORV damage (Factor E), or stochastic events, such as hurricanes, storm surges, wildfires (Factor E). The limited distributions and/or small population sizes of many populations of *S. reclinatum* ssp. *austrofloridense, D. pauciflora, C. deltoidea* ssp. *pinetorum,* and *D. carthagenensis* var. *floridana* make them extremely susceptible to the detrimental effects of further habitat modification, degradation, and loss, as well as other anthropogenic threats. Mechanisms leading to the decline of *S. reclinatum* ssp. *austrofloridense, D. pauciflora, C. deltoidea* ssp. *pinetorum,* and *D. carthagenensis* var. *floridana,* as discussed above, range from local (*e.g.,* agriculture) to regional (*e.g.,* development, fragmentation, nonnative species) to global influences (*e.g.,* effects of climate change, sea level rise). The synergistic effects of threats, such as impacts from hurricanes on a species with a limited distribution and small populations, make it difficult to predict population viability. While these stressors may act in isolation, it is more probable that many stressors are acting simultaneously (or in combination) on populations of *S. reclinatum* ssp. *austrofloridense, D. pauciflora, C. deltoidea* ssp. *pinetorum,* and *D. carthagenensis* var. *floridana,* making them more vulnerable.

Determination of Status

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 (*i.e.,* ''listed''). Under section 4(a)(1) of the Act, we may list a species based on (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. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

Determination of Status Throughout All of the Species' Ranges

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana.* Numerous populations of the four plants have been extirpated from these species' historical ranges, and habitat destruction and modification resulting from human population growth and development, agricultural conversion, and inadequate fire management (Factor A); competition from nonnative, invasive species (Factor E); changes in climatic conditions, including sea level rise and changes in hydrology (Factor E); and natural stochastic events, including hurricanes, storm surges, and wildfires (Factor E) are threats to the existing populations. Existing regulatory mechanisms have not led to a reduction or removal of threats impacting the four plants (see Factor D discussion, above). These threats are ongoing, rangewide, and expected to continue in the future. A significant percentage of populations of the four plants are relatively small and isolated from one another, and their ability to recolonize suitable habitat is unlikely without human intervention, if at all. The threats have had and will continue to have substantial adverse effects on the four plants and their habitats. Although attempts are ongoing to alleviate or minimize some of these threats at certain locations, all populations appear to be impacted by one or more threats.

Due to the stressors described in detail above, *Dalea carthagenensis* var. *floridana* is presently in danger of extinction throughout its entire range due to the immediacy and severity of threats currently impacting the species. The risk of extinction is high because there are few (9) extant populations and the majority of the populations are small and isolated, and have limited to no potential for recolonization. Therefore, on the basis of the best available scientific and commercial information, we list *Dalea carthagenensis* var. *floridana* as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for this species because of the contracted range and small population size of *Dalea carthagenensis* var. *floridana* and because the threats are occurring rangewide, are ongoing, and are expected to continue into the future.

Sideroxlyon reclinatum ssp. *austrofloridense, Digitaria pauciflora,* and *Chamaesyce deltoidea* ssp. *pinetorum* face threats similar to *Dalea carthagenensis* var. *floridana.* However, we find that endangered species status is not appropriate for these three species. While we have evidence of threats under Factors A and E affecting the species, large populations of these three species are protected and actively managed at ENP and BCNP (*Sideroxylon reclinatum* ssp. *austrofloridense,* ENP (10,000–100,000 plants); *Digitaria pauciflora,* BCNP (≤10,000 plants) and ENP (100,000–200,000 plants); and *Chamaesyce deltoidea* ssp. *pinetorum* ENP (10,000–100,000 plants)). Short- and medium-term threats to these three plants in these protected areas are being addressed. However, sea level rise is projected to have profound negative effects on the habitat of these plants in the foreseeable future. Decades prior to

inundation, pine rocklands and associated habitats are likely to undergo habitat transitions related to climate change, including changes to hydrology and increasing vulnerability to storm surge. In addition, many existing habitat fragments located in urban areas are projected to be developed for housing as the human population grows and adjusts to changing sea levels under this scenario. Therefore, based on the best available information, we find that *Sideroxlyon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* and *Chamaesyce deltoidea* ssp. *pinetorum* are likely to become endangered species within the foreseeable future throughout all or a significant portion of their ranges, and we list these species as threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Determination of Status in a Significant Portion of the Range

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 within the foreseeable future throughout all or a significant portion of its range.'' The phrase ''significant portion of its range'' is not defined by the Act, and a district court has held that aspects of the Service's Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species and ''Threatened Species'' (79 FR 37577 (July 1, 2014)) (SPR Policy) were not valid. Center for Biological Diversity v. Jewell, No. 14–cv–02506–RM (D. Ariz. Mar. 29, 2017) (Pygmy-Owl Decision).

Although the court's order in that case has not yet gone into effect, if the court denies the pending motion for reconsideration, the SPR Policy would become vacated. Therefore, 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 interpretation set out below 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. Because the interpretation we are applying is consistent with the SPR Policy, we summarize herein the bases for our interpretation, and also refer the public to the SPR Policy itself for a more-detailed explanation of our reasons for interpreting the phrase in this way.

An important factor that influences the question of whether an SPR analysis is necessary here is what the consequence would be if the Service were to find that *Dalea carthagenensis* var. *floridana, Sideroxlyon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* or *Chamaesyce deltoidea* ssp. *pinetorum* is in danger of extinction or likely to become so throughout a significant portion of its range. Two district court decisions have evaluated whether the outcomes of the Service's SPR determinations were reasonable. As described in the SPR Policy, 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 of Wildlife v. Salazar, 729 F. Supp. 2d 1207, 1222 (D. Mont. 2010) (delisting of the Northern Rocky Mountains DPS of gray wolf; 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, 15–16 (D. Ariz. Sept. 30, 2010) (Gunnison's prairie dog). The issue has not been addressed by a Federal Court of Appeals.

Consistent with the district court case law, we interpret that the consequence of finding that *Dalea carthagenensis* var. *floridana, Sideroxlyon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* or *Chamaesyce deltoidea* ssp. *pinetorum* is in danger of extinction or likely to become so throughout a significant portion of its range would be that the entire species would be listed as an endangered species or threatened species, respectively, and the Act's protections would be applied to all individuals of the species wherever found. Thus, the ''throughout all'' phrase and the SPR phrase provide two independent bases for listing. We note that in the Act 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 we undertook, above, in our assessment of the status of the species was to determine its status throughout all of its range. Having determined that *Dalea carthagenensis* var. *floridana* is in danger of extinction throughout all of its range and that *Sideroxlyon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* or *Chamaesyce deltoidea* ssp. *pinetorum* are likely to become endangered species within the foreseeable future, we now examine whether it is necessary to determine their status throughout a significant portion of their ranges.

Because we found *Dalea carthagenensis* var. *floridana* to be in danger of extinction throughout all of its range, we do not need to conduct an analysis of whether there is any significant portion of its range where the species is in danger of extinction or likely to become so in the foreseeable future. This is consistent with the Act because when we find that a species is currently in danger of extinction throughout all of its range (*i.e.,* meets the definition of an endangered species), the species is experiencing high-magnitude threats across its range or threats are so high in particular areas that they severely affect the species across its range. Therefore, the species is in danger of extinction throughout every portion of its range and an analysis of whether there is any SPR that may be in danger of extinction or likely to become so would not result in a different outcome.

Because we found that *Sideroxlyon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* and *Chamaesyce deltoidea* ssp. *pinetorum* are likely to become in danger of extinction in the foreseeable future throughout all of their range, we do not need to conduct an analysis of whether there is any significant portion of the range where these species are in danger of extinction or likely to become so in the foreseeable future. This interpretation is consistent with the Act for the following three reasons: (1) It ensures that the species qualifies for only one listing status; (2) it preserves a meaningful standard for when a portion of a species' range is significant; and (3) it allows the Service to apply the appropriate level of protection to the species.

Critical Habitat Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Service may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat.''

Prudency of Critical Habitat

There is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for these species, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, we next determine whether such designation of critical habitat would not be beneficial to the species. We have determined that there are habitat-based threats to these species identified under Factor A. Therefore, we find that the designation of critical habitat would be beneficial to these species through the provisions of section 7 of the Act. Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the four plant species and would be beneficial, we find that designation of critical habitat is prudent for *Dalea carthagenensis* var. *floridana, Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora,* and *Chamaesyce deltoidea* ssp. *pinetorum.*

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act, we must find whether critical habitat for the four plant species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analysis of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. A careful assessment of the economic impacts that may occur due to a critical habitat designation is still ongoing, and we are in the process of acquiring the necessary information needed to perform that assessment. The information sufficient to perform a required analysis of the impacts of the designation is lacking. Accordingly, we find that critical habitat for these species, in accordance with section 4(a)(3)(A) of the Act, to be not determinable at this time. When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, a recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*) or from our South Florida Ecological Services Field Office (see **ADDRESSES**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Florida will be eligible for Federal funds to implement management actions that promote the protection or recovery of *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana.* Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana.* Additionally, we invite you to submit any new information on these plants whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within these species' habitat that may require consultation as described in the preceding paragraph and include management and any other landscape-altering activities on Federal lands administered by the National Park Service (ENP and BCNP), Department of Defense, and Department of Homeland Security (United States Coast Guard); issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; construction and maintenance of roads or highways by the Federal Highway Administration; and disaster relief efforts conducted by the Federal Emergency Management Agency.

With respect to endangered plants, prohibitions outlined at 50 CFR 17.61 make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. In addition, for endangered plants, the Act prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Exceptions to these prohibitions are outlined in 50 CFR 17.62.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62. With regard to endangered plants, the Service may issue a permit authorizing any activity otherwise prohibited by 50 CFR 17.61 for scientific purposes or for enhancing the propagation or survival of endangered plants.

With respect to threatened plants, 50 CFR 17.71 provides that all of the provisions in 50 CFR 17.61 shall apply to threatened plants. These provisions make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession any such plant species from areas under Federal jurisdiction. However, there is one exception for threatened plants. Seeds of cultivated specimens of species treated as threatened shall be exempt from all the provisions of 50 CFR 17.61, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container during the course of any activity otherwise subject to these regulations.

We may issue permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.72. A permit issued under this section must be for one of the following: scientific purposes, the enhancement of the propagation or survival of threatened species, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Normal agricultural and silvicultural practices, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and

(2) Normal residential landscape activities.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, Endangered Species Permits, 1875 Century Boulevard, Atlanta, GA 30345 (telephone 404–679–7140; fax 404–679–7081).

With *Sideroxylon reclinatum* ssp. *austrofloridense, Digitaria pauciflora, Chamaesyce deltoidea* ssp. *pinetorum,* and *Dalea carthagenensis* var. *floridana* listed under the Act, the State of Florida's Endangered Species Act (Florida Statutes 581.185) is automatically invoked, which also prohibits take of these plants and encourages conservation by State government agencies. However, as discussed above, these plants are already listed as endangered on the State of Florida's Regulated Plant Index. Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (Florida Statutes 581.185). Funds for these activities could be made available under section 6 of the Act (Cooperation with the States). Thus, the Federal protection afforded to these plants by listing them as endangered or threatened species will be reinforced and supplemented by protection under State law.

Based on the best available information, the following activities may potentially result in a violation of section 9 the Act; this list is not comprehensive:

(1) Importing any such species into, or exporting any of the four plant species from, the United States.

(2) Removing and reducing to possession any of the four plant species from areas under Federal jurisdiction; maliciously damaging or destroying

Dalea carthagenensis var. *floridana* on any such area; or removing, cutting, digging up, or damaging or destroying *D. carthagenensis* var. *floridana* on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.

(3) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any of the four plant species.

(4) Selling or offering for sale in interstate or foreign commerce any of the four plant species.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species 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), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), 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. No tribal lands are affected by this final rule.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the South Florida Ecological Services Field Office (see **ADDRESSES**).

Authors

The primary authors of this final rule are the staff members of the South Florida Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

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.

■ 2. Amend § 17.12(h) by adding entries for *Chamaesyce deltoidea* ssp. *pinetorum, Dalea carthagenensis* var. *floridana, Digitaria pauciflora,* and *Sideroxylon reclinatum* ssp. *austrofloridense,* in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
* *	*	*	*	* * *
Chamaesyce deltoidea ssp. *pinetorum*.	Pineland sandmat.	Wherever found.	T	82 FR [Insert **Federal Register** page where the document begins]; 10/06/2017.
* *	*	*	*	* * *
Dalea carthagenensis var. *floridana*.	Florida prairie-clover.	Wherever found.	E	82 FR [Insert **Federal Register** page where the document begins]; 10/06/2017.
* *	*	*	*	* * *
Digitaria pauciflora	Florida crab-grass.	Wherever found.	T	82 FR [Insert **Federal Register** page where the document begins]; 10/06/2017.
* *	*	*	*	* * *
Sideroxylon reclinatum ssp. *austrofloridense*.	Everglades bully.	Wherever found.	T	82 FR [Insert **Federal Register** page where the document begins]; 10/06/2017.
* *	*	*	*	* * *

Dated: September 7, 2017.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2017–21617 Filed 10–5–17; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 82, No. 193
Friday, October 6, 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

Office of the Secretary

2 CFR Part 1201

[Docket DOT–OST–2015–0013]

RIN 2105–AE38

Geographic-Based Hiring Preferences in Administering Federal Awards

AGENCY: Office of the Secretary (OST); U.S. Department of Transportation (DOT).

ACTION: Notice of withdrawal of proposed rulemaking and related pilot programs.

SUMMARY: The Department of Transportation (the Department) is withdrawing a Notice of Proposed Rulemaking (NPRM) issued on March 6, 2015, that proposed to amend its regulations implementing the Government-wide Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to permit recipients and subrecipients of certain DOT funds to impose geographic-based hiring preferences whenever not otherwise prohibited by Federal law. The Department is withdrawing this NPRM because, after review of all comments, the Department has determined that promulgating a provision to allow geographic-based hiring preferences is not practicable for the efficient and cost-effective delivery of projects. Additionally, this Notice rescinds two related pilot programs: 1. Innovative Contracting and 2. FHWA HUD Livability Local Hire Initiative.

DATES: As of October 6, 2017, the NPRM ''Geographic-Based Hiring Preferences in Administering Federal Awards,'' published on March 6, 2015 (80 FR 12092), is withdrawn. As of October 6, 2017, the Department's two experimental contracting pilot programs—1. Innovative Contracting (Local Labor Hire) (80 FR 12557), and 2. the FHWA HUD Livability Local Hire Initiative (75 FR 36467)—are withdrawn.

ADDRESSES: U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–9152.

Electronic Access: You can view and download related documents and public comments by going to the Web site *http://www.regulations.gov.* Enter the docket number DOT–OST–2015–0013 in the search field.

FOR FURTHER INFORMATION CONTACT: Terence Carlson, Assistant General Counsel for General Law (OST–C10), U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–9152.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2015, the Department published an NPRM proposing to amend the Department's regulations at 2 CFR part 1201 to permit recipients and subrecipients of certain DOT funds to impose geographic-based hiring preferences whenever not otherwise prohibited by Federal law. On March 13, 2015, the American Public Transportation Association (APTA) filed a comment requesting that the Department extend the comment period for the NPRM by 30 days to May 6, 2015. The Department granted APTA's request on April 8, 2015 (80 FR 18784).

Recipients and subrecipients at the local government level have local hiring provisions that they apply to procurements that do not involve Federal funding. However, the Department's regulations at 2 CFR part 1201, which adopted the Office of Management and Budget's (OMB) revised Government-wide Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards to non-Federal entities at 2 CFR part 200 (Common Rule), prohibit the use of in-State or local geographic-based preferences in the evaluation of bids or proposals except where Federal statute mandates or encourages the use of such preferences. This prohibition extends to the use of geographic-based hiring preferences in contracts that are awarded by recipients and subrecipients with Federal financial assistance since such preferences could result in a competitive advantage for contractors based in the targeted hiring area.

Under the NPRM, the Department proposed to amend Part 1201 by promulgating a provision that would have deviated from the OMB guidance by making clear that geographic-based hiring preferences might be used in certain DOT grant programs. However, the proposed deviation would have only applied to the extent that such geographic-based hiring preferences would not have otherwise been prohibited by Federal statute or regulation.

Approximately 181 comments were filed in response to the NPRM. These comments were submitted by approximately 23 contractors, 22 contractor trade groups, 11 rolling stock manufacturers, 4 unions, 14 government agencies, 32 advocacy groups, 70 individuals, and 5 Federal and State elected officials (U.S. Senator Charles E. Schumer, U.S. Representative Tom Reed, Georgia State Senator Nan Orrock, California State Senator Connie M. Leyva, and California State Assembly Member Cheryl R. Brown). All of the construction and rolling stock industry comments were opposed to the adoption of the proposed rule, while the advocacy groups and unions all were in favor. The individual commenters were split. States and municipalities were mostly in favor of the proposed rule. However, the California Department of Transportation (Caltrans), Regional Transportation District in Denver (RTD-Denver), Foothill Transit, and the Capital Metropolitan Transportation Authority expressed concerns with the implementation of the rule. Generally, commenters agreed that transportation investments and policies can improve access to jobs, education, and goods movement, while providing construction and operations jobs. However, many commenters questioned the assertion that local and geographic-based hiring preferences led to such economic benefits.

Discussion of Comments

While there were comments regarding the benefits of transportation investments, commenters opposed to the Department's proposed amendments to Part 1201 expressed concerns about the unintended consequences of the NPRM, including, for example, impacts on safety, competitive bidding, the ability to maintain a well-trained workforce, and increased project costs.

Some commenters supported the proposed amendments because, among other reasons, local residents would benefit from such investments. Other commenters explained that the NPRM did not go far enough and should have included other types of preferences, in addition to geographic-based.

The Department's proposed NPRM did not make a distinction by project type (*e.g.,* transit vs. maritime project). Many commenters, especially in the transit arena, expressed strong opposition to the application of the NPRM to rolling stock procurements because of the potential effect on existing manufacturing plants and the capital and personnel investments already made in specific parts of the country.

Reason for Withdrawal

The Department operates two experimental contracting pilot programs under FHWA and FTA's existing authorities: (i) Innovative Contracting (Local Labor Hire) (80 FR 12257) and (ii) FHWA HUD Livability Local Hire Initiative (75 FR 36467). The Local Labor Hire pilot is conducted under 23 U.S.C. 502 (*i.e.,* FHWA's Special Experimental Project No. 14 (SEP–14)) and 49 U.S.C. 5312, 5314 and 5325, and the FHWA HUD initiative is conducted under SEP–14. The Department has used these research authorities to advance non-traditional contracting practices for contracts awarded by FTA and FHWA.

Under SEP–14 and 49 U.S.C. 5312, 5314 and 5325, the Department has the flexibility to experiment with innovative approaches to highway and transit contracting. However, the Department is discontinuing these two pilot programs because of minimal interest from intended participants and the difficulty in evaluating cost effectiveness based upon objective criteria.

For additional background, 23 U.S.C. 112 requires a state transportation department to award contracts using federal highway funds by ''competitive bidding, unless the State transportation department demonstrates . . . that some other method is more cost effective.'' 23 U.S.C. 112(b)(1) (2006). For a bidding process to be ''competitive,'' the state transportation department must award contracts for projects ''only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility.'' *Id.* section 112(b)(1). For example, a 1986 opinion from the Office of Legal Counsel (OLC) at the Department of Justice concluded that section 112 obligated the Secretary of Transportation to withhold federal funding for highway construction contracts that were subject to a New York City law imposing disadvantages on a class of responsible bidders, where the city failed to demonstrate that its departure from competitive bidding requirements was justified by considerations of cost effectiveness. *See Compatibility of New York City Local Law 19 with Federal Highway Act Competitive Bidding Requirements,* 10 Op. O.L.C. 101 (1986) (''*Competitive Bidding Requirements*''). Since that 1986 opinion, FHWA had taken the position that state or local bidding specifications or contract requirements that limit the pool of potential bidders violate section 112's competition requirement unless they directly relate to the bidder's performance of the necessary work in a competent and responsible manner.

In 2013, OLC opined that a state or local requirement that has only an incidental effect on the pool of potential bidders or that imposes reasonable requirements related to the performance of the necessary work would not unduly limit competition. However, a requirement that has more than an incidental effect on the pool of potential bidders and does not relate to the work's performance would unduly limit competition unless it promotes the efficient and effective use of federal funds. OLC stated that generally speaking, state or local government requirements that eliminate or disadvantage a class of potential responsible bidders (and thus have a non-trivial effect on the pool of such bidders) to advance objectives unrelated to the efficient use of federal funds or the integrity of the bidding process (or to the performance of the necessary work in a competent and responsible manner) are likely to unduly impede competition in contravention of the substantive component of section 112's competitive bidding requirement. OLC further reaffirmed the view expressed in its 1986 opinion that ''the efficient use of federal funds is the touchstone by which the legality of state procurement rules for federally funded highway projects is to be tested,'' *Competitive Bidding Requirements,* 10 Op. O.L.C. at 105. In 2013, OLC did not understand section 112's competitive bidding requirement to compel FHWA to reject every state or local bidding specification or contract requirement that may have the effect of reducing the number of potential bidders for a particular contract.

The stated purpose of this NPRM was to permit recipients and subrecipients of certain DOT grant program funds to impose geographic-based hiring preferences whenever not otherwise prohibited by Federal law. DOT agrees that the efficient use of federal funds is the touchstone by which the legality of state procurement rules, including any proposed geographic-based hiring preferences, for federally funded projects is to be tested. Here, in light of the responses to the NPRM, the lack of data on whether specific local geographic preferences would have an incidental effect on competition, the long-standing Federal government prohibition in the Common Rule on the use of in-State or local geographic-based preferences, the demonstrated minimal interest from intended participants under the two experimental programs, and the inability to evaluate cost-effectiveness based upon objective criteria under the two experimental programs, the Department has determined that promulgating a regulation that would have deviated from the OMB guidance in the Common Rule, by allowing the use of geographic-based hiring preferences in some of the Department's grant programs, is not practicable for the efficient and cost-effective delivery of projects. The comments received did not include any data that demonstrates that the claimed benefits of the proposed rule justify the costs. The Department has also determined that an additional request for public comment based on the proposed NPRM would not provide the information needed to accomplish the stated purpose.

Issued in Washington, DC, on October 2, 2017.

Elaine L. Chao,

Secretary of Transportation.

[FR Doc. 2017–21574 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–9X–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–115; NRC–2017–0132]

Fire Protection Compensatory Measures

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking dated May 1, 2017, from David Lochbaum with co-petitioner Paul Gunter, on behalf of the Union of Concerned Scientists and

Beyond Nuclear (the petitioners), requesting that the NRC ''promulgate regulations that establish acceptable conditions for use of compensatory measures (*e.g.,* fire watches, surveillance cameras, etc.) during periods when fire protection regulations are not met.'' The petition was docketed by the NRC on May 26, 2017, and has been assigned Docket No. PRM–50–115. The NRC is examining the issues raised in PRM–50–115 to determine whether they should be considered in rulemaking. The NRC is requesting public comment on this petition.

DATES: Submit comments by December 20, 2017. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0132. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jessica Kratchman, Office of Nuclear Reactor Regulations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5112, email: *Jessica.Kratchman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0132 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–2017–0132.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The petition for rulemaking is available in ADAMS under Accession No. ML17146A393.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0132 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. The Petitioner

The petition was filed by David Lochbaum, on behalf of the Union of Concerned Scientists and Beyond Nuclear, with one co-petitioner, Paul Gunter of Beyond Nuclear.

III. The Petition

On behalf of the Union of Concerned Scientists and Beyond Nuclear, David Lochbaum with co-petitioner Paul Gunter request that the NRC amend its regulations to establish acceptable conditions for the use of compensatory measures (*e.g.,* fire watches, surveillance cameras) during periods when fire protection regulations are not met.

IV. Discussion of the Petition

The petitioners state that the NRC's ''fire protection regulations were primarily established with the issuance of Appendix R to 10 CFR part 50 in 1980 and the NFPA [National Fire Protection Association] 805 alternative regulations adopted in 2004.'' The petitioners are referring to the final rule in 1980 that issued appendix R to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR) and revised 10 CFR 50.48 (45 FR 76602; November 19, 1980). The 2004 final rule (69 FR 33536; June 6, 2004) further revised 10 CFR 50.48 and added alternative fire protection regulations based on National Fire Protection Association Standard 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants.'' The petitioners include as ''Figure 1'' in their petition a timeline including compensatory measure guidance documents that the NRC has issued. The NRC guidance documents from Figure 1 in the petition include the following:

(1) NRC Bulletin 1975–004, ''Cable Fire at Browns Ferry Nuclear Power Station,'' March 25, 1975 (ADAMS Accession No. ML070220189);

(2) Nuclear Steam Supply System Vendor Standard Technical Specifications (NUREG–0103, ''Standard Technical Specifications for Babcock and Wilcox Pressurized Water Reactors,'' Revision 0, 1976 (ADAMS Accession No. ML17266A000), Revision 1 (ADAMS Accession No. ML17266A001); NUREG–0123, ''Standard Technical Specifications for General Electric Boiling Water Reactors,'' Revision 0, 1976 (ADAMS Accession No. ML17266A007), Revision 1 (ADAMS Accession No. ML17266A008); NUREG–0212, ''Standard Technical Specifications for Combustion Engineering Pressurized Water Reactors,'' Revision 0, 1976 (ADAMS Accession No. ML17266A003), Revision 1 (ADAMS Accession No. ML17266A004); and NUREG–0452, ''Standard Technical Specifications for Westinghouse Pressurized Water

Reactors,'' Revision 0, 1976 (ADAMS Accession No. ML17266A005), Revision 1 (ADAMS Accession No. ML17266A006));

(3) Branch Technical Position Auxiliary Power Conversion Systems Branch 9.5–1, ''Guidelines for Fire Protection for Nuclear Power Plants,'' May 1, 1976 (ADAMS Accession No. ML070660461), Revision 1, May 13, 1979 (ADAMS Accession No. ML070660450); and Appendix A, ''Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976,'' August 23, 1976 (ADAMS Accession No. ML15322A269), and February 24, 1977 (ADAMS Accession No. ML070660458);

(4) NUREG–0050, ''Recommendations Related to Browns Ferry Fire,'' February 1976 (ADAMS Accession No. ML070520452);

(5) NRC Generic Letter 1980–100, ''Appendix R to 10 CFR Regarding Fire Protection—Federal Register Notice,'' November 24, 1980 (ADAMS Accession No. ML070220242);

(6) NRC Generic Letter 1981–012, ''Fire Protection Rule (45 FR 76602, November 19, 1980),'' February 20, 1981 (ADAMS Accession No. ML031080537);

(7) NRC Generic Letter 1986–010, ''Implementation of Fire Protection Requirements,'' April 24, 1986 (ADAMS Accession No. ML031150322);

(8) NRC Generic Letter 1988–012, ''Removal of Fire Protection Requirements from Technical Specifications,'' August 2, 1988 (ADAMS Accession No. ML031150471);

(9) NRC Information Notice No. 1997–048, ''Inadequate or Inappropriate Interim Fire Protection Compensatory Measures,'' July 9, 1997 (ADAMS Accession No. ML070180068);

(10) NRC Bulletin 1992–01, ''Failure of Thermo-Lag 330 Fire Barrier System to Maintain Cabling in Wide Cable Trays and Small Conduits Free from Fire Damage,'' June 24, 1992 (ADAMS Accession No. ML031250239);

(11) NRC Regulatory Issue Summary 2005–007, ''Performance of Manual Actions to Satisfy the Requirements of 10 CFR part 50 Appendix R Section III.G.2.,'' April 19, 2005 (ADAMS Accession No. ML042360547);

(12) NRC Regulatory Guide 1.189, ''Fire Protection for Nuclear Power Plants,'' Revision 2, October 2009 (ADAMS Accession No. ML092580550);

(13) NRC Regulatory Guide 1.205, ''Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,'' Revision 0, May 2006 (ADAMS Accession No. ML061100174); Revision 1, December 2009 (ADAMS Accession No. ML092730314); and

(14) NUREG/CR–7135, ''Compensatory and Alternative Regulatory Measures for Nuclear Power Plant Fire Protection (CARMEN–FIRE),'' Final Report, August 2015 (ADAMS Accession No. ML15226A446).

The petitioners assert that these guidance documents associated with the current regulations are deficient for three reasons:

(1) They are not regulations and, therefore, convey unenforceable expectations;

(2) They create confusion for licensees, NRC inspectors and reviewers, and the public about what constitutes an acceptable substitute for compliance with fire protection regulations following identification of a deficiency, as well as the permissible durations of the substitutions; and

(3) They were not developed through an open process, so the public did not have opportunities to weigh in on the acceptability of various compensatory measures.

The petitioners assert that a proposed rulemaking would ensure that compensatory measures are used appropriately following a violation in fire protection regulations, and that the rulemaking process would provide the public the opportunity to weigh in on the appropriateness of the use of various compensatory measures before the requirements are adopted as final. The petitioners also assert that a final rule would clear up any current confusion caused by the guidance documents for the NRC's licensees and inspectors and would provide enforceable requirements for the NRC.

Dated at Rockville, Maryland, this 2nd day of October 2017.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2017–21544 Filed 10–5–17; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0904; Product Identifier 2017–NM–071–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 787–8 and 787–9 airplanes. This proposed AD was prompted by a report of an in-service reliability issue of a latent flow sensor failure combined with single cabin air compressor (CAC) operation. This condition resulted in reduced airflow which led to a persistent single CAC surge condition that caused overheat damage to the CAC inlet. This proposed AD would require installing new pack control unit (PCU) software for the cabin air conditioning and temperature control system (CACTCS) and new CAC outlet pressure sensor J-tube hardware, and doing related investigative and corrective actions if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 20, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110 SK57, Seal Beach, CA 90740–5600; telephone: 562–797–1717; Internet: *https://www.myboeingfleet.com.* You may view this 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–2017–0904.

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–2017–0904; 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: Caspar Wang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6414; fax: 425–917–6590; email: *caspar.wang@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–2017–0904; Product Identifier 2017–NM–071–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

Boeing Model 787–8 and 787–9 airplanes have two air conditioning packs, one on each side of the airplane. Each pack contains two CACs that function together under normal operating conditions. The Smarter Environmental Control System ensures that airflow is distributed equally across the CACs. If the airflow is low, a single operating CAC on a pack can be driven into an undetected surge. We have received a report of an in-service reliability issue involving a latent flow sensor failure combined with single CAC operation, which resulted in reduced airflow and a persistent single CAC surge condition. During the surge, the temperature exceeded the 450-degree Fahrenheit maximum allowable temperature and generated enough heat energy to degrade the structural integrity of the CAC inlet. The PCU software logic was only designed to detect the surge when both CACs were operating on the same pack, and therefore, it was unable to detect a persistent single CAC surge condition which led to CAC inlet overheating. This overheating condition resulted in structural degradation of the CAC inlet, fumes in the cabin and flight deck, and interruption to in-service air conditioning.

In addition, we received a report of an in-service event involving foreign object debris in the CAC inlet and accumulation at the ozone converter that also led to a persistent single CAC surge resulting in overheat damage to the CAC inlet housing. The proposed PCU software change would redistribute the airflow to provide more flow to a single CAC, reducing the potential for a CAC surge. Reduced airflow leading to persistent CAC surge conditions and CAC inlet overheating, if not corrected, could result in structural degradation of the CAC inlet, and fumes in the cabin and flight deck, as well as causing interruption to in-service air conditioning.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Service Bulletin B787–81205–SB210075–00, Issue 003, dated March 29, 2017; and Boeing Service Bulletin B787–81205–SB210077–00, Issue 003, dated October 20, 2016. The service information describes procedures for installing new PCU software for the CACTCS and new CAC outlet pressure sensor J-tube hardware, and doing related investigative and corrective actions. These documents are distinct since they apply to different airplane models. 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 accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0904.

The phrase ''related investigative actions'' is used in this proposed AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Costs of Compliance

We estimate that this proposed AD affects 62 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
Software Installation	1 work-hour × $85 per hour = $85	$0	$85	$5,270
Modify Left and Right Inboard and Outboard CAC Modules.	20 work-hours × $85 per hour = $1,700	22,821	24,521	1,520,302

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2017–0904; Product Identifier 2017–NM–071–AD.

(a) Comments Due Date

We must receive comments by November 20, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category, as identified in the applicable service information specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Boeing Service Bulletin B787–81205–SB210075–00, Issue 003, dated March 29, 2017 (for Model 787–8 airplanes).

(2) Boeing Service Bulletin B787–81205–SB210077–00, Issue 003, dated October 20, 2016 (for Model 787–9 airplanes).

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by a report of an in-service reliability issue involving a latent flow sensor failure combined with single cabin air compressor (CAC) operation. This condition resulted in reduced airflow which led to a persistent single CAC surge condition that caused overheat damage to the CAC inlet. We are issuing this AD to prevent CAC inlet overheating leading to structural degradation of the CAC inlet, fumes in the cabin and flight deck, and interruption to in-service air conditioning.

(f) Compliance

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

(g) Software and Hardware Installation

Within 36 months after the effective date of this AD: Install new pack control unit software for the cabin air conditioning and temperature control system and new CAC outlet pressure sensor J-tube hardware, and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) or (g)(2) of this AD. Related investigative and corrective actions must be done before further flight.

(1) For Boeing Model 787–8 airplanes: Boeing Service Bulletin B787–81205–SB210075–00, Issue 003, dated March 29, 2017.

(2) For Boeing Model 787–9 airplanes: Boeing Service Bulletin B787–81205–SB210077–00, Issue 003, dated October 20, 2016.

(h) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraphs (h)(1) or (h)(2) of this AD.

(1) Boeing Service Bulletin B787–81205–SB210075–00, Issue 002, dated May 11, 2016 (for Model 787–8 airplanes).

(2) Boeing Service Bulletin B787–81205–SB210077–00, Issue 002, dated May 11, 2016 (for Model 787–9 airplanes).

(i) 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 (j)(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.

(j) Related Information

(1) For more information about this AD, contact Caspar Wang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6414; fax: 425–917–6590; email: *caspar.wang@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110 SK57, Seal Beach, CA 90740–5600; telephone: 562–797–1717; Internet: *https://www.myboeingfleet.com.* You may view this 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 25, 2017.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–21365 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0905; Product Identifier 2017–NM–090–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2013–01–02, which applies to certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; and Model 757–200, –200PF, and –300 series airplanes. AD 2013–01–02 requires replacing the control switches of certain cargo doors. Since we issued AD 2013–01–02, additional un-commanded cargo door operation has been reported. This proposed AD would require replacement of certain cargo door control switches with a new improved switch; installation of an arm switch in certain cargo doors; operational and functional tests; and applicable on-condition actions. This proposed AD would also add airplanes to the applicability. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 20, 2017.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone: 562–797–1717; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0905.

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–2017–0905; 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: Caspar Wang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6414; fax: 425–917–6590; email: *caspar.wang@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–2017–0905; Product Identifier 2017–NM–090–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

On January 4, 2013, we issued AD 2013–01–02, Amendment 39–17316 (78 FR 4051, January 18, 2013) (''AD 2013–01–02''), for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; and Model 757–200, –200PF, and –300 series airplanes. AD 2013–01–02 requires replacing the control switches of the forward, aft, and nose cargo doors of Model 747 airplanes; and replacing the control switches of cargo doors 1 and 2 of Model 757 series airplanes. AD 2013–01–02 resulted from reports of problems associated with the uncommanded operation of cargo doors. We issued AD 2013–01–02 to prevent injuries to persons and damage to the airplane.

Actions Since AD 2013–01–02 Was Issued

Since we issued AD 2013–01–02, additional un-commanded cargo door operation has been reported. In the most recent report the switch had only been installed for 44 months. Testing of failed switches found that the cargo door control switch can remain actuated after released to the OFF position. We have determined that the replacements required by AD 2013–01–02 do not adequately address the identified unsafe condition and that new improved switches must be installed. With a new cargo door control and arm switch configuration installed, the operator must manually move both switches to operate the cargo door. Both switches are spring loaded to the off position and releasing either switch will stop the door operation.

We have also determined that certain Model 757–200CB series airplanes and Model 747–8F and 747–8 series airplanes are affected by the identified unsafe condition and must be included in this proposed AD.

Related Service Information Under 1 CFR Part 51

We reviewed the following Boeing service information.

- Boeing Service Bulletin 747–52–2307, dated May 23, 2017, and Boeing Service Bulletin 747–52–2308, dated June 5, 2017. This service information describes procedures for replacement of the nose, forward, and aft cargo door control switches with new improved switches, installation of an arm switch in the forward and aft cargo doors, a nose cargo door normal operational test, forward and aft cargo door open and close functional tests, and applicable on-condition actions. These documents are distinct since they apply to different airplane models in different configurations.
- Boeing Service Bulletin 757–52–0093, Revision 1, dated April 21, 2017. This service information describes procedures for replacement of the forward and aft cargo door control

switches with new improved switches, installation of an arm switch in the forward and aft cargo doors, an operational test of the No. 1 and No. 2 cargo doors, repetitive functional tests of the No. 1 and No. 2 cargo doors, and applicable on-condition actions.

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

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain none of the requirements of AD 2013–01–02. This proposed AD would require accomplishing the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Service Bulletin 747–52–2307, dated May 23, 2017; Boeing Service Bulletin 747–52–2308, dated June 5, 2017; and Boeing Service Bulletin 757–52–0093, Revision 1, dated April 21, 2017; as applicable; except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD also would add airplanes to the applicability.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0905.

Differences Between This Proposed AD and the Service Information

The effectivity of Boeing Service Bulletin 757–52–0093, Revision 1, dated April 21, 2017, is limited to Model 757–200, –200CB, –200PF, and –300 series airplanes, line numbers 1 through 1050. However, the applicability of this proposed AD includes four additional Model 757 airplanes, variable numbers NP901 through NP904 inclusive. We have included this difference because of new findings related to these additional airplanes indicating they are subject to the identified unsafe condition. This difference has been coordinated with Boeing. Additionally, Boeing has indicated that Boeing Service Bulletin 757–52–0093, Revision 1, dated April 21, 2017, will be revised to include the additional airplanes. We will consider including the revised service information, if available, in the final rule.

Costs of Compliance

We estimate that this proposed AD affects 584 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement (Boeing Service Bulletin 747-52-2307) (14 airplanes).	78 work-hours × $85 per hour = $6,630	$12,874	$19,504	$273,056.
Replacement (Boeing Service Bulletin 747-52-2308) (94 airplanes).	24 work-hours × $85 per hour = $2,040	980	3,020	283,880.
Replacement (Boeing Service Bulletin 757-52-0093) (476 airplanes).	51 work-hours × $85 per hour = $4,335	10,626	14,961	7,121,436.
Repetitive Test (Boeing Service Bulletin 757-52-0093) (476 airplanes).	3 work-hours × $85 per hour = $255 per test cycle.	0	255 per test cycle	121,380 per test cycle.

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–01–02, Amendment 39–17316 (78 FR 4051, January 18, 2013), and adding the following new AD:

The Boeing Company: Docket No. FAA–2017–0905; Product Identifier 2017–NM–090–AD.

(a) Comments Due Date

We must receive comments by November 20, 2017.

(b) Affected ADs

This AD replaces AD 2013–01–02, Amendment 39–17316 (78 FR 4051, January 18, 2013) (''AD 2013–01–02'').

(c) Applicability

This AD applies to The Boeing Company airplanes; certificated in any category; as identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

(1) Model 747–8F and 747–8 series airplanes as identified in Boeing Service Bulletin 747–52–2307, dated May 23, 2017.

(2) Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes as identified in Boeing Service Bulletin 747–52–2308, dated June 5, 2017.

(3) Model 757–200, –200PF, –200CB, and –300 series airplanes as identified in Boeing Service Bulletin 757–52–0093, Revision 1, dated April 21, 2017.

(4) Model 757–200, –200PF, –200CB, and –300 series airplanes, variable numbers NP901 through NP904 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by reports of uncommanded cargo door operation. We are issuing this AD to prevent failures of the cargo door control switch from allowing uncommanded movement of the cargo door, which if not corrected, could lead to injuries to persons and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Except as required by paragraph (h) of this AD: Do the applicable actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD.

(1) For airplanes identified in Boeing Service Bulletin 747–52–2307, dated May 23, 2017: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–52–2307, dated May 23, 2017, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Service Bulletin 747–52–2307, dated May 23, 2017.

(2) For airplanes identified in Boeing Service Bulletin 747–52–2308, dated June 5, 2017: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–52–2308, dated June 5, 2017, do all applicable actions identified as RC in, and in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–52–2308, dated June 5, 2017.

(3) For airplanes identified in Boeing Service Bulletin 757–52–0093, Revision 1, dated April 21, 2017: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 757–52–0093, Revision 1, dated April 21, 2017, do all applicable actions identified as RC in, and in accordance with, the Accomplishment Instructions of Boeing Service Bulletin 757–52–0093, Revision 1, dated April 21, 2017.

(4) For airplanes identified in paragraph (c)(4) of this AD: Within 24 months after the effective date of this AD, replace the nose, forward, and aft cargo door control switches, as applicable, with new improved switches, install an arm switch in the forward and aft cargo doors, do operational and functional tests, and do applicable on-condition actions, in accordance with a method approved by the Manager, Seattle ACO Branch, FAA.

(h) Exceptions to Service Information

Where Boeing Service Bulletin 747–52–2307, dated May 23, 2017; Boeing Service Bulletin 747–52–2308, dated June 5, 2017; and Boeing Service Bulletin 757–52–0093, Revision 1, dated April 21, 2017; specify a compliance time after ''the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g)(3) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 757–52–0093, dated May 5, 2016.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

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

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Caspar Wang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6414; fax: 425–917–6590; email: *caspar.wang@faa.gov*.

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

Issued in Renton, Washington, on September 27, 2017.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–21366 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0903; Product Identifier 2017–NM–074–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 737–300 and –500 series airplanes. This proposed AD was prompted by a report indicating that fatigue cracks were found in the lower wing skin of an airplane with winglets installed. This proposed AD would require repetitive inspections for cracking of the lower wing skin, and repair if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 20, 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 Aviation Partners Boeing, 2811 South 102nd Street, Suite 200, Seattle, WA 98168; phone: 1–206–830–7699; fax: 1–206–767–3355; email: *leng@aviationpartners.com;* Internet: *http://www.aviationpartnersboeing.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–2017–0903; 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: Lu Lu, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *lu.lu@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–2017–0903; Product Identifier 2017–NM–074–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

We have received a report indicating that fatigue cracks were found in the lower wing skin at the farthest outboard fastener of stringer L–5 between wing station (WSTA) 479 and WSTA 505 on a Model 737–300 airplane with Aviation Partners Boeing blended winglet kit installed per Supplemental Type Certificate (STC) ST01219SE. If not corrected, fatigue cracking of the lower wing skin common to the runout of stringer L–5 on Boeing Model 737–300 and 737–500 airplanes with winglets installed could grow and result in loss of the structural integrity of the wing, and reduced, or complete loss of, controllability of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Aviation Partners Boeing Service Bulletin AP737C–57–002, dated April 5, 2017. The service information describes procedures for repetitive inspections for cracking of the lower wing skin, and on-condition actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

Differences Between This Proposed AD and the Service Information

Aviation Partners Boeing Service Bulletin AP737C–57–002, dated April 5, 2017, specifies to contact the manufacturer for certain instructions, but this proposed AD would require using repair methods, modification deviations, and alteration deviations in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 93 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
Repetitive inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle.	Up to $7,905 per inspection cycle.

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2017–0903; Product Identifier 2017–NM–074–AD.

(a) Comments Due Date

We must receive comments by November 20, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–300 and –500 series airplanes, certificated in any category, with blended winglet kits installed in accordance with Supplemental Type Certificate (STC) ST01219SE.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report indicating that fatigue cracks were found in the lower wing skin at stringer L–5 of a Boeing Model 737–300 airplane with winglets installed. We are issuing this AD to detect and correct fatigue cracking of the lower wing skin common to the runout of stringer L–5, which could grow and result in loss of structural integrity of the wing, and consequent reduced, or complete loss of, controllability of the airplane.

(f) Compliance

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

(g) Repetitive Inspection

Within 18 months after the effective date of this AD: Do a detailed inspection for cracking of the lower wing skin external surface at the stringer L–5 location on the left and right wings, in accordance with the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP737C–57–002, dated April 5, 2017. Repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles or 9,000 flight hours, whichever occurs first.

(h) Repair

If any crack is found during any inspection required by paragraph (g) of this AD, repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD. Although Aviation Partners Boeing Service Bulletin AP737C–57–002, dated April 5, 2017, specifies to contact Boeing for repair instructions, and specifies that action as ''RC'' (Required for Compliance), this AD requires repair as specified in this paragraph.

(i) 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 (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(4) Except as required by paragraph (h) of this AD: For service information that contains steps that are labeled as RC, the

provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

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

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Lu Lu, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6478; fax: 425–917–6590; email: *lu.lu@faa.gov.*

(2) For service information identified in this AD, contact Aviation Partners Boeing, 2811 South 102nd Street, Suite 200, Seattle, WA 98168; phone: 1–206–830–7699; fax: 1–206–767–3355; email: *leng@aviationpartners.com;* Internet: *http://www.aviationpartnersboeing.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 25, 2017.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–21225 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0889; Product Identifier 2009–NE–35–AD]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A., Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2012–03–11 that applies to all Safran Helicopter Engines, S.A., Arriel 2B and 2B1 turboshaft engines. AD 2012–03–11 requires checking the transmissible torque between the low-pressure (LP) pump impeller and the high-pressure (HP) pump shaft on the HP/LP pump and metering valve assembly, hereafter referred to as the hydro-mechanical metering unit (HMU). Since we issued AD 2012–03–11, the manufacturer determined that incorporating Modification TU 178 is a more effective method to reduce the risk of uncoupling between the LP fuel pump impeller and the HP fuel pump shaft than the prior Modification TU 147. This proposed AD would require inspection and possible replacement of the HMU. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 20, 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 Safran Helicopter Engines, S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15. You may view this service information at the FAA, Engine and Propeller Standards Branch, 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–2009–0889.

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–2009–0889; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The 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: Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@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–2009–0889; Product Identifier 2009–NE–35–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

We issued AD 2012–03–11, Amendment 39–16953 (77 FR 8092, February 14, 2012), ''AD 2012–03–11,'' for all Turbomeca S.A. Arriel 2B and 2B1 turboshaft engines. AD 2012–03–11 requires checking the transmissible torque between the LP pump impeller and the HP pump shaft on the pre- and post-Modification TU 147 HMUs. AD 2012–03–11 resulted from instances of uncoupling between the LP fuel pump impeller and the HP fuel pump shaft. We issued AD 2012–03–11 to prevent an uncommanded in-flight shutdown, which can result in a forced autorotation landing or accident.

Actions Since AD 2012–03–11 Was Issued

Since we issued AD 2012–03–11, the manufacturer determined that modification of an engine to incorporate Modification TU 178 is a more effective method to reduce the risk of uncoupling between the LP fuel pump impeller and the HP fuel pump shaft than the prior Modification TU 147. Also since we issued AD 2012–03–11, the European Aviation Safety Agency (EASA) has issued AD 2017–0102, dated June 13, 2017, which requires inspection and possible replacement of the HMU.

Related Service Information Under 1 CFR Part 51

Turbomeca, S.A., has issued Alert Mandatory Service Bulletin (MSB) A292 73 2830, Version B, dated July 10, 2009, and Alert MSB A292 73 2836, Version A, dated August 17, 2010. Turbomeca Alert MSB A292 73 2830, Version B, is used to do the inspection for pre-Modification TU 147 HMUs. Turbomeca Alert MSB A292 73 2836, Version A, is used to do the inspection for HMUs that have incorporated Modification TU 147. 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.

Other Related Service Information

Safran Helicopter Engines has issued MSB 292 73 2178, Version B, dated March 23, 2017, introducing an HMU with a reinforced drive link between the LP impeller and fuel pump drive shaft (Modification TU 178). Safran Helicopter Engines has also issued MSB A292 73 2830, Version C; and A292 73 2836, Version B, both dated April 5, 2017, which exempt HMUs incorporating Modification TU 178 from the inspections previously recommended by Turbomeca.

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 inspection and, depending on the results of the inspection, possible replacement of the HMU. This proposed AD would further require replacement of pre-Modification TU 178 HMUs with an HMU incorporating Modification TU 178 within 2,200 engine flight hours or 72 months, whichever occurs later, after the effective date of this AD.

Costs of Compliance

We estimate that this proposed AD affects 417 engines installed on helicopters 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
Remove and replace the HP/LP fuel pump metering unit.	2 work-hours × $85 per hour = $170	$17,400	$17,570	$7,326,690

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 associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2012–03–11, Amendment 39–16953 (77 FR 8092, February 14, 2012), and adding the following new AD:

Safran Helicopter Engines (Type Certificate previously held by Turbomeca, S.A.): Docket No. FAA–2009–0889; Product Identifier 2009–NE–35–AD.

(a) Comments Due Date

We must receive comments by November 20, 2017.

(b) Affected ADs

This AD replaces AD 2012–03–11, Amendment 39–16953 (77 FR 8092, February 14, 2012).

(c) Applicability

This AD applies to Safran Helicopter Engines, S.A., Arriel 2B and 2B1 turboshaft engines, except those incorporating Modification TU 178.

(d) Subject

Joint Aircraft System Component (JASC) Code 7300, Engine Fuel and Control.

(e) Unsafe Condition

This AD was prompted by analysis that indicated the modification of an engine to incorporate Modification TU 178 provides a

more effective method than Modification TU 147 to reduce the risk of uncoupling between the low-pressure (LP) fuel pump impeller and the high-pressure (HP) fuel pump shaft of the HP/LP pump and hydro-mechanical metering unit (HMU). We are issuing this AD to prevent failure of the HMU. The unsafe condition, if not corrected, could result in failure of the engine, in-flight shutdown, and loss of the helicopter.

(f) Compliance

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

(1) Check the transmissible torque between the LP fuel pump impeller and the HP fuel pump shaft as follows:

(i) For pre-Modification TU 147 HMUs, check the torque before accumulating 500 engine flight hours (FHs) since March 11, 2010 or before the next flight, whichever occurs later. Use Paragraph 2 of Turbomeca Alert Mandatory Service Bulletin (MSB) A292 73 2830, Version B, dated July 10, 2009 to do the check.

(ii) For HMUs that incorporated Modification TU 147 on or before March 31, 2010, and those HMUs not listed in Figures 2 or 3 of Turbomeca Alert MSB A292 73 2836, Version A, dated August 17, 2010, check the torque before the next flight. Use Paragraph 2 of Turbomeca Alert MSB A292 73 2836, Version A, to do the check.

(2) If the HMU does not pass the torque check, replace the HMU with a post-Modification TU 178 HMU before the next flight.

(g) Mandatory Terminating Action

Within 2,200 engine FHs or 72 months after the effective date of this AD, whichever occurs first, replace any pre-Modification TU 178 HMU with a post-Modification TU 178 configuration HMU.

(h) Installation Prohibition

After the effective date of this AD, do not install a pre-Modification TU 178 HMU on engines incorporating a post-Modification TU 178 HMU.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, may 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. You may email your request to: *ANE-AD-AMOC@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.

(j) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2017–0102, dated June 13, 2017, 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–2009–0889.

(3) For service information identified in this AD, contact Safran Helicopter Engines, S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15. You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on September 29, 2017.

Robert J. Ganley,

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

[FR Doc. 2017–21344 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0902; Product Identifier 2016–NM–188–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2004–03–07, which applies to certain Airbus Model A320–111, –211, –212, and –231 series airplanes. AD 2004–03–07 requires repetitive inspections for fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at frame (FR) 36, adjacent to the longitudinal beams on the left and right sides of the airplane; and repair as necessary. Since we issued AD 2004–03–07, additional cracking has been found under the longitudinal beams in locations outside of the inspection areas required by AD 2004–03–07. This proposed AD would retain certain requirements of AD 2004–03–07, expand the applicability, and require an inspection of the fastener holes on the pressure panel between FR 35 and FR 36 under the longitudinal beam and modification or repair as applicable. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 20, 2017.

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0902; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0902; Product Identifier 2016–NM–188–AD at the beginning of your comments. We specifically invite comments on the overall regulatory,

economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On January 29, 2004, we issued AD 2004–03–07, Amendment 39–13451 (69 FR 5907, February 9, 2004) (''AD 2004–03–07''), for certain Airbus Model A320–111, –211, –212, and –231 series airplanes. AD 2004–03–07 was prompted by fatigue tests which revealed cracking around the fasteners attaching the pressure panel to the flexible bracket at FR 36, adjacent to the longitudinal beams on the left and right sides of the airplane. Investigation revealed that the damage was caused by high loads in this area. AD 2004–03–07 requires repetitive inspections for fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at FR 36, adjacent to the longitudinal beams on the left and right sides of the airplane; and repair as necessary. AD 2004–03–07 also provides an optional terminating action for the repetitive inspections. We issued AD 2004–03–07 to detect and correct fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at the FR 36 adjacent to the longitudinal beams, which could result in reduced structural integrity and possible rapid decompression of the airplane.

Since we issued AD 2004–03–07, additional cracks have been found under the longitudinal beams at locations that are not included in the inspection area required by AD 2004–03–07. Fatigue and damage tolerance analyses were performed and the results indicated that all the holes in the pressure panel above the longitudinal beams have to be cold worked.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0206, dated October 13, 2016; corrected October 14, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A318 and Model A319 series airplanes, Model A320–211, –212, –214, –231, –232, and –233 airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

> During fatigue tests, cracks were found around the fasteners connecting the pressure panel with the flexible bracket at fuselage frame (FR) 36, adjacent to the longitudinal beams on left-hand (LH) and right-hand (RH) sides.
>
> This condition, if not detected and corrected, could impair the structural integrity of the aeroplane.
>
> To address this unsafe condition, DGAC [Direction Générale de l'Aviation Civile] France issued [French] AD 2000–531–155(B) [which corresponds with FAA AD 2004–03–07] to require repetitive inspections of the longitudinal beams of the FR 36 pressure panel and, depending on findings, the accomplishment of a repair.
>
> Since that [French] AD was issued, additional cracks have been found under the beams, but in locations not covered by the required inspections. Fatigue and damage tolerance analyses were performed, the results of which indicated that all the holes in the pressure panel above all the longitudinal beams have to be cold worked.
>
> For the reasons described above, this [EASA] AD retains the requirements of DGAC France AD 2000–531–155(B), which is superseded, extends the applicability to all A320 family aeroplanes and requires [a special detailed inspection of the fastener holes on the pressure panel between FR35 and FR36 under the longitudinal beam and] modification [or repair] of all the affected holes.
>
> This [EASA] AD is republished to correct the number of the superseded DGAC AD.

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–2017–0902.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–53–1264, Revision 01, dated July 4, 2016. The service information describes procedures for a special detailed inspection (rotating probe) for cracking of the fastener holes on the pressure panel between FR 35 and FR 36 under the longitudinal beam and repair of any crack.

Airbus has also issued Service Bulletin A320–53–1240, Revision 01, dated April 4, 2016, which describes procedures for modifying the pressure panel above the left and right longitudinal beams, including related investigative action (*e.g.,* high frequency eddy current (rototest) inspection of all the removed fastener holes) and corrective actions (*e.g.,* repair), by cold working the attachment holes under the longitudinal beam at FR 36 for airplanes on which no cracking was found.

In addition, Airbus issued Service Bulletin A320–53–1263, Revision 01, dated February 29, 2016, which describes procedures for modifying the pressure panel above the left and right longitudinal beams, including related investigative actions (*e.g.,* eddy current rotating probe inspection of the fastener holes) and corrective actions (*e.g.,* repair), by adding a doubler and a filler, and cold expansion of the holes under the longitudinal beam at FR 36 for airplanes on which cracking was found.

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

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

The MCAI specifies that operators can calculate revised thresholds for Model A319 and A320 series airplanes with sharklets installed (Airbus Service Bulletin A320–57–1193). This proposed AD does not include those calculations because the calculations could result in different inspection thresholds for each individual airplane. However, under the provisions of paragraph (o)(1) of this AD, we will consider requests for approval of alternative compliance times.

Costs of Compliance

We estimate that this proposed AD affects 737 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection [Retained from AD 2004–03–07].	Up to 2 work-hours × $85 per hour = $170 per inspection cycle.	$0	Up to $170 per inspection cycle.	Up to $125,290 per inspection cycle.
Inspection [new proposed requirement].	13 work-hours × $85 per hour = $1,105	0	$1,105	$814,385.

We estimate the following costs to do any necessary modifications that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these modifications:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modification	Up to 213 work-hours × $85 per hour = $18,105	Up to $8,510	Up to $26,615.
Reporting	1 work-hour × $85 per hour = $85	$0	$85.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition repairs specified in the service information.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this NPRM is 2120–0056. The paperwork cost associated with this NPRM has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this NPRM is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

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 removing Airworthiness Directive (AD) 2004–03–07, Amendment 39–13451 (69 FR 5907, February 9, 2004), and adding the following new AD:

Airbus: Docket No. FAA–2017–0902; Product Identifier 2016–NM–188–AD.

(a) Comments Due Date

We must receive comments by November 20, 2017.

(b) Affected ADs

This AD replaces AD 2004–03–07, Amendment 39–13451 (69 FR 5907, February 9, 2004) (''AD 2004–03–07'').

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, except for airplanes on which Airbus Modification 151574 was embodied in production.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by fatigue tests which revealed cracking around the fasteners attaching the pressure panel to the flexible bracket at frame (FR) 36, adjacent to the longitudinal beams on the left and right sides of the airplane. We are issuing this AD to detect and correct fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at the FR 36 adjacent to the longitudinal beams, which could result in reduced structural integrity of the airplane and possible rapid decompression of the airplane.

(f) Compliance

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

(g) Retained Inspection and Follow-On Actions, With No Changes

This paragraph restates the requirements of paragraphs (a) and (b) of AD 2004–03–07, with no changes.

(1) For Model A320–211, –212, and –231 series airplanes having serial numbers 0002 through 0107 inclusive, except those airplanes on which Airbus Modification 21202/K1432 has been incorporated in production, or on which Airbus Service Bulletin A320–53–1029, Revision 01, dated April 29, 2002, has been incorporated: Prior to the accumulation of 30,000 total flight cycles, do a rotating probe inspection on airplanes with a center fuel tank, or a detailed inspection on airplanes without a center fuel tank, to detect cracking around the fasteners that attach the pressure panel to the flexible bracket at FR 36, adjacent to the longitudinal beams on the left and right sides of the airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1030, Revision 01, dated May 21, 2002.

(2) If no crack is detected by the inspection required by paragraph (g)(1) of this AD, repeat the applicable inspection thereafter at intervals not to exceed 6,000 flight cycles for airplanes without a center fuel tank, and at intervals not to exceed 18,000 flight cycles for airplanes with a center fuel tank.

(h) Retained Corrective Actions, With Specific Delegation Approval Language

This paragraph restates the requirements of paragraphs (c) and (d) of AD 2004–03–07, with specific delegation approval language.

(1) If any crack is detected during any inspection required by paragraph (g)(1) of this AD, before further flight, repair the affected structure by accomplishing all applicable actions in accordance with paragraphs 3.B. through 3.E. of the Accomplishment Instructions of Airbus Service Bulletin A320–53–1030, Revision 01, dated May 21, 2002. Repeat the applicable inspection thereafter at intervals not to exceed 6,000 flight cycles for airplanes without a center fuel tank, and at intervals not to exceed 18,000 flight cycles for airplanes with a center fuel tank. For any area where cracking is repaired, the repair constitutes terminating action for the repetitive inspection of that area.

Note 1 to paragraph (h)(1) of this AD: Airbus Service Bulletin A320–53–1030 references Airbus Service Bulletin A320–53–1029, Revision 01, dated April 29, 2002, as an additional source of service information for certain repairs.

(2) If Airbus Service Bulletin A320–53–1030, Revision 01, dated May 21, 2002, specifies to contact the manufacturer for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o)(2) of this AD.

(i) Retained Optional Terminating Action for Paragraphs (g) and (h) of This AD, With Revised Compliance Language

This paragraph restates the requirements of paragraph (e) of AD 2004–03–07, with revised compliance language. For Model A320–211, –212, and –231 series airplanes having serial numbers 0002 through 0107 inclusive, except those airplanes on which Airbus Modification 21202/K1432 has been incorporated in production, or Airbus Service Bulletin A320–53–1029, Revision 01, dated April 29, 2002: Modification, before the effective date of this AD, of the structure around the fasteners that attach the pressure panel to the flexible bracket at FR 36, adjacent to the longitudinal beams on the left and right sides of the airplane, by accomplishing all applicable actions in accordance with paragraphs 3.A. through 3.E. of the Accomplishment Instructions of Airbus Service Bulletin A320–53–1029, Revision 01, dated April 29, 2002, constitutes terminating action for the actions required by paragraphs (g) and (h) of this AD.

(j) New Requirement of This AD: Inspection

For all airplanes, except for airplanes identified in paragraph (l) of this AD: At the applicable time specified in table 1 to paragraph (j) of this AD, do a special detailed inspection for cracking of the fastener holes on the pressure panel between FR 35 and FR 36 under the longitudinal beam, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1264, Revision 01, dated July 4, 2016.

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Table 1 to Paragraph (j) of this AD - *Pressure Panel Inspection /Modification Threshold*

Affected airplanes	**Time accumulated by the airplane on the effective date of this AD** (flight cycles and flight hours since the airplane's first flight)	**Compliance time** (flight cycles or flight hours, whichever occurs first)
All airplanes, except Model A318 Elite airplanes; Model A319CJ airplanes (Corporate Jet - airplanes equipped with Modifications 28238, 28162, and 28342); Airbus Model A319 series airplanes on which the actions specified in Airbus Service Bulletin A320-57-1193 have been embodied (sharklets installed as retrofit); Airbus Model A320 series airplanes on which the actions specified in Airbus Service Bulletin A320-57-1193 have been embodied (sharklets installed as retrofit)	Less than 12,000 flight cycles and 24,000 flight hours	**A:** Before accumulating 12,000 flight cycles or 24,000 flight hours since the airplane's first flight; or **B:** Within 5,000 flight cycles or 10,000 flight hours after the effective date of this AD; whichever occurs later, A or B
	12,000 flight cycles or 24,000 flight hours or more, but less than 30,000 flight cycles and 60,000 flight hours	Within 5,000 flight cycles or 10,000 flight hours after the effective date of this AD, without exceeding 33,000 flight cycles or 66,000 flight hours since the airplane's first flight
	30,000 flight cycles or 60,000 flight hours or more, but less than 40,000 flight cycles and 80,000 flight hours	Within 3,000 flight cycles or 6,000 flight hours after the effective date of this AD, without exceeding 41,800 flight cycles or 83,600 flight hours since the airplane's first flight
	40,000 flight cycles or 80,000 flight hours or more, but less than 44,000 flight cycles and 88,000 flight hours	Within 1,800 flight cycles or 3,600 flight hours after the effective date of this AD, without exceeding 44,600 flight cycles or 89,200 flight hours since the airplane's first flight
	44,000 flight cycles or 88,000 flight hours or more	Within 600 flight cycles or 1,200 flight hours after the effective date of this AD

Affected airplanes	Time accumulated by the airplane on the effective date of this AD (flight cycles and flight hours since the airplane's first flight)	Compliance time (flight cycles or flight hours, whichever occurs first)
Model A318 Elite airplanes	Less than 11,300 flight cycles and 33,900 flight hours	**A**: Before accumulating 11,300 flight cycles or 33,900 flight hours since airplane first flight; or **B**: Within 2,500 flight cycles or 7,600 flight hours after the effective date of this AD; whichever occurs later, **A** or **B**
	11,300 flight cycles or 33,900 flight hours or more	Within 2,500 flight cycles or 7,600 flight hours after the effective date of this AD
Model A319 CJ airplanes on which the actions specified in Airbus Service Bulletin A320-57-1193 have not been embodied (sharklets not installed)	Less than 6,300 flight cycles and 27,000 flight hours	**A**: Before accumulating 6,300 flight cycles or 27,000 flight hours since airplane first flight; or **B**: Within 2,300 flight cycles or 11,300 flight hours after the effective date of this AD; whichever occurs later, **A** or **B**
	6,300 flight cycles or 27,000 flight hours or more, but less than 14,300 flight cycles and 68,300 flight hours	Within 2,300 flight cycles or 11,300 flight hours after the effective date of this AD, without exceeding 15,700 flight cycles or 75,100 flight hours since the airplane's first flight
	14,300 flight cycles or 68,300 flight hours or more	Within 1,400 flight cycles or 6,800 flight hours after the effective date of this AD

Affected airplanes	Time accumulated by the airplane on the effective date of this AD (flight cycles and flight hours since the airplane's first flight)	Compliance time (flight cycles or flight hours, whichever occurs first)
Model A319 and A320 series airplanes on which the actions specified in Airbus Service Bulletin A320-57-1193 have been embodied (sharklets installed)	Less than 9,000 flight cycles and 18,000 flight hours	**A**: Before accumulating 9,800 flight cycles or 19,600 flight hours since the airplane's first flight; or **B**: Within 3,300 flight cycles or 6,600 flight hours after the effective date of this AD; whichever occurs later, **A** or **B***
	9,000 flight cycles or 18,000 flight hours or more, but less than 24,000 flight cycles and 48,000 flight hours	Within 3,300 flight cycles or 6,600 flight hours after the effective date of this AD, without exceeding 25,300 flight cycles or 50,600 flight hours since the airplane's first flight*
	24,000 flight cycles or 48,000 flight hours or more, but less than 30,000 flight cycles and 60,000 flight hours	Within 1,300 flight cycles or 2,600 flight hours after the effective date of this AD, without exceeding 30,700 flight cycles or 61,400 flight hours since the airplane's first flight*
	30,000 flight cycles or 60,000 flight hours or more, but less than 32,000 flight cycles and 64,000 flight hours	Within 700 flight cycles or 1,400 flight hours after the effective date of this AD, without exceeding 32,300 flight cycles or 64,600 flight hours since the airplane's first flight*
	32,000 flight cycles or 64,000 flight hours or more, but less than 33,000 flight cycles and 66,000 flight hours	Within 300 flight cycles or 600 flight hours after the effective date of this AD, without exceeding 33,000 flight cycles or 66,000 flight hours since the airplane's first flight; or within 30 days after the effective date of this AD; whichever occurs later*

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Affected airplanes	Time accumulated by the airplane on the effective date of this AD (flight cycles and flight hours since the airplane's first flight)	Compliance time (flight cycles or flight hours, whichever occurs first)
Model A319 airplanes used as CJ post Airbus Service Bulletin A320-57-1193	Less than 4,200 flight cycles and 18,000 flight hours	**A**: Before accumulating 4,500 flight cycles or 19,600 flight hours since the airplane's first flight; or **B**: Within 1,600 flight cycles or 6,800 flight hours after the effective date of this AD; whichever occurs later, **A** or **B****
	4,200 flight cycles or 18,000 flight hours or more, but less than 14,300 flight cycles and 61,400 flight hours	Within 1,600 flight cycles or 6,800 flight hours after the effective date of this AD, without exceeding 15,300 flight cycles or 65,700 flight hours since the airplane's first flight**
	14,300 flight cycles or 61,400 flight hours or more but less than 18,000 flight cycles or 77,400 flight hours	Within 1,000 flight cycles or 4,300 flight hours after the effective date of this AD**
For A319 and A320 airplanes with a sharklet installed as a retrofit (post-Airbus Service Bulletin A320-57-1193 (post-mod 160080)): Guidance on determining an alternative compliance time for the initial inspection can be found in in "Compliance Time" of Part 2, Damage Tolerant Airworthiness Limitation Items, of the Model A318/A319/A320/A321 Airworthiness Limitations Section; however, to use that alternative compliance time, operators must request an alternative method of compliance using a method approved in accordance with the procedures specified in paragraph (o)(1) of this AD.		
* Without exceeding the time at which an inspection is required through the threshold or compliance time of a Model A320 airplane, pre-Airbus Service Bulletin A320-57-1193 (pre-mod 160080).		
** Without exceeding the time at which an inspection is required through the threshold or compliance time of a Model A319CJ airplane, pre-Airbus Service Bulletin A320-57-1193 (pre-mod 160080).		

(k) On-Condition Actions

(1) If, during any inspection required by paragraph (j) of this AD, no cracking is found, or cracking is found that is within the limits specified in Airbus Service Bulletin A320–53–1264, Revision 01, dated July 4, 2016: Before further flight, modify the pressure panel above the left and right longitudinal beams, including doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1240, Revision 01, dated April 4, 2016; or Service Bulletin A320–53–1263, Revision 01, dated February 29, 2016; as applicable. Do all related investigative and corrective actions before further flight. Where Airbus Service Bulletin A320–53–1240, Revision 01, dated April 4, 2016; and Service Bulletin A320–53–1263, Revision 01, dated February 29, 2016; specify to contact Airbus for appropriate action: Before further flight, accomplish the repair in accordance with the procedures specified in paragraph (o)(2) of this AD.

(2) If, during any inspection required by paragraph (j) of this AD, any cracking is found that exceeds the limits specified in Airbus Service Bulletin A320–53–1264, Revision 01, dated July 4, 2016: Do the actions specified in, and at the compliance times specified in, paragraphs (k)(2)(i) and (k)(2)(ii) of this AD.

(i) Before further flight, repair any cracking in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1264, Revision 01, dated July 4, 2016. Where Airbus Service Bulletin A320–53–1264, Revision 01, dated July 4, 2016, specifies to contact Airbus for appropriate action, and specifies that action as ''RC'' (Required for Compliance): Before further flight, request approval of repair instructions using a method approved in accordance with the procedures specified in paragraph (o)(2) of this AD, and accomplish the repair accordingly within the compliance time specified in those instructions. If no compliance time is defined in the repair instructions, accomplish the repair before further flight.

(ii) At the times specified in paragraph (k)(2)(ii)(A) or (k)(2)(ii)(B) of this AD, as applicable: Report any findings of cracking that exceeds the limits specified in Airbus Service Bulletin A320–53–1264, Revision 01, dated July 4, 2016, to Airbus Customer Services through TechRequest on Airbus World (*https://w3.airbus.com/*) by selecting Engineering Domain and ATA 57–10.

(A) If the inspection was done on or after the effective date of this AD: Report within 90 days after that inspection.

(B) If the inspection was done before the effective date of this AD: Report within 90 days after the effective date of this AD.

(l) Actions for Certain Airplanes

For Model A319 and Model A320 series airplanes on which the actions specified in Airbus Service Bulletin A320–57–1193 have been embodied and the airplane has accumulated 33,000 flight cycles or 66,000 flight hours or more since the airplane's first flight on the effective date of this AD: Within 30 days after the effective date of this AD, contact the Manager, International Section, Transport Standards Branch FAA; or the EASA; or Airbus's EASA DOA for approved repair instructions and within the compliance time specified in those instructions, accomplish the repair accordingly. If no compliance time is defined in the repair instructions, accomplish the repair before the next flight.

(m) Terminating Action for Repetitive Inspections Required by Paragraph (g)(2) of This AD

(1) Modification of an airplane as specified in paragraph (m)(1)(i), (m)(1)(ii), or (m)(1)(iii) of this AD constitutes terminating action for the repetitive inspection required by paragraph (g)(2) of this AD for that airplane only.

(i) Modification of an airplane as required by paragraph (k)(1) of this AD.

(ii) Modification of an airplane prior to the effective date of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1240, dated March 19, 2015; or Airbus Service Bulletin A320–53–1263, dated March 19, 2015; as applicable.

(iii) Modification of an airplane using instructions obtained in accordance with the procedures specified in paragraph (o)(2) of this AD.

(2) Repair of an airplane as required by paragraph (k)(2) of this AD constitutes terminating action for the repetitive inspections required by paragraph (g)(2) of this AD for that airplane, unless specified otherwise in the repair instructions approved by the Manager, International Section, Transport Standards Branch, FAA; or the EASA; or Airbus's EASA DOA.

(n) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraphs (g) and (h)(1) of this AD, if those actions were performed before March 15, 2004 (the effective date of AD 2004–03–07) using Airbus Service Bulletin A320–53–1030, dated January 5, 2000; or Airbus Service Bulletin A320–53–1029, dated January 5, 2000.

(2) This paragraph provides credit for actions required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1264, dated March 19, 2015.

(3) This paragraph provides credit for actions required by paragraph (k)(1) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1240, dated March 19, 2015; or Airbus Service Bulletin A320–53–1263, dated March 19, 2015; for that airplane only.

(o) 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 Branch, send it to the attention of the person identified paragraph (p)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (k)(2)(i) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(4) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(p) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0206, dated October 13, 2016; corrected October 14, 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–2017–0902.

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

Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this 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 21, 2017.

Dionne Palermo,

Acting Director, System Oversight Branch, Aircraft Certification Service.

[FR Doc. 2017–21221 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No.: FAA–2017–0879]

RIN 2120–AA65

Criteria and Process for the Cancellation of Standard Instrument Approach Procedures as Part of the National Procedures Assessment (NPA)

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

ACTION: Proposed policy and request for comment.

SUMMARY: As new technology facilitates the introduction of area navigation (RNAV) instrument approach procedures over the past decade, the number of procedures available in the National Airspace System has nearly doubled. The complexity and cost to the Federal Aviation Administration (FAA) of maintaining the instrument flight procedures inventory while expanding the new RNAV capability is not sustainable. The FAA is considering the cancellation of certain circling procedures (to include circling-only instrument approach procedures (IAPs) and circling minima charted on straight-in IAPs). The FAA proposes specific criteria to guide the identification and selection of appropriate circling procedures that can be considered for cancellation. The circling procedures associated with this cancellation initiative would be selected from the criteria outlined below. This document is not a part of the FAA's VOR minimum operating network (MON) initiative.

DATES: Comments must be received on or before November 6, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0879 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 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 *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *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: For technical questions concerning this action, contact Lonnie Everhart, Aeronautical Information Services AJV–5, Federal Aviation Administration, Air Traffic Organization, 6500 S. MacArthur Blvd, Oklahoma City, OK 73169; Telephone (405) 954–4576; Email *AMC-ATO-IFP-Cancellations@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

Under 49 U.S.C. 40103(a), the Administrator has broad authority to regulate the safe and efficient use of the navigable airspace. The Administrator is also authorized to issue air traffic rules and regulations to govern the flight, navigation, protection, and identification of aircraft for the protections of persons and property on the ground and for the efficient use of the navigable airspace. 49 U.S.C. 40103(b). Under Section 44701(a)(5), the Administrator promotes safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. This action is within the scope of that authority.

IAPs are promulgated by rulemaking procedures and are incorporated by reference pursuant to 5 U.S.C. 552(a) and 1 CFR part 51 into Title 14 of the Code of Federal Regulations; Part 97 (14 CFR part 97), Subpart C—TERPS Procedures.

Background

The National Airspace System (NAS) is currently in transition to a ''NextGen NAS''. During this transition, the FAA is managing the technology and procedures to support both the Legacy NAS as well as the NextGen NAS. Managing two versions of the NAS requires excess manpower, infrastructure, and information management which is costly and unsupportable in the longterm. To mitigate these costs, the FAA has a number of efforts underway to effectively transition from the legacy to the NextGen NAS. One area of focus for this transition is instrument flight procedures (IFPs). The FAA seeks to ensure an effective transition from ground-based IFPs to greater availability and use of satellite-based IFPs while maintaining NAS safety.

In early 2015, the FAA requested the RTCA's Tactical Operations Committee (TOC) with providing feedback and recommendations on criteria and processes for cancelling instrument flight procedures. Among the many recommendations provided by the TOC were criteria on how to identify circling procedures that would qualify as candidates for cancellation. As of the beginning of 2017, there are approximately 12,000 IAPs in publication, and there were nearly 10,600 circling lines of minima. Circling procedures account for approximately one-third of all lines of minima in the NAS.

In its continued effort to right-size the NAS through optimization and elimination of redundant and unnecessary IAPs, the FAA proposes the following criteria to guide the identification and selection of appropriate circling procedures to be considered for cancellation.

It should be noted that National Procedures Assessment (NPA) Instrument Flight Procedure (IFP) cancellation activities and associated criteria do not supersede similar activities being performed under the

FAA's VOR MON Program. See 81 FR 48694 (July 26, 2016). However, NPA IFP cancellation activities have been coordinated with the FAA office responsible for the VOR MON implementation program, and its input has been thoroughly considered.

Proposed Policy

All circling procedures will continue to be reviewed through the established IAP periodic review process.[1] As part of that review process, the FAA is proposing that each circling procedure would be evaluated against the following questions:

—Is this the only IAP at the airport?
—Is this procedure a designated MON airport procedure?
—If multiple IAPs serve a single runway end, is this the lowest circling minima for that runway? Note: If the RNAV circling minima is not the lowest, but is within 50' of the lowest, the FAA would give the RNAV preference.
—Would cancellation result in removal of circling minima from all conventional NAVAID procedures at an airport? Note: If circling minima exists for multiple Conventional NAVAID procedures, preference would be to retain ILS circling minima.
—Would cancellation result in all circling minima being removed from all airports within 20 NMs?
—Will removal eliminate lowest landing minima to an individual runway?

The following questions are applicable only to circling-only procedures:

—Does this circling-only procedure exist because of high terrain or an obstacle that makes a straight-in procedure unfeasible or which would result in the straight-in minimums being higher than the circling minima?
—Is this circling-only procedure (1) at an airport where not all runway ends have a straight-in IAP, and (2) does it have a Final Approach Course not aligned within 45 degrees of a runway which has a straight-in IAP?

Further consideration for cancellation under this policy would be terminated if any of the aforementioned questions are answered in the affirmative. If all questions are answered in the negative, the procedure would be processed as described in the following paragraph.

When a candidate has been identified, Aeronautical Information Services would send a notification of procedure cancellation memorandum and completed checklist to the appropriate Regional Service Area, Operations Support Group.[2] The Regional Service Area, Operations Support Group would follow the same notification process used for standard IFP requests.[3] Consistent with FAA procedures outlined in the procedure cancellation memorandum, comments regarding the aforementioned circling procedure would need to be submitted within 30 days of the timestamp on the communication media through which it was delivered. Comments would be directed to the Regional Service Area, Operations Support Group for dissemination to Aeronautical Information Services. Comments would be adjudicated by Aeronautical Information Services within 30 days of the timestamp on the communication media through which it was received. A final decision would be forwarded to Regional Service Area, Operations Support Group to disseminate to commenter(s). The cancellation of the part 97 instrument procedure will be published in the **Federal Register**.

Invitation for Comments

The FAA invites interested parties to submit written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from implementation of the proposed policy. Comments should explain the reason for modifying or not implementing this proposed policy. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments or, if comments are filed electronically, commenters should submit only one time.

The FAA will consider all comments it receives on or before the closing date for comments before acting on proposed policy. The FAA will consider comments submitted after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

[1] Section 2–8 of FAA Order 8260.19 (Flight Procedures and Airspace) sets forth the minimum frequency of review of instrument procedures.

[2] The FAA has placed sample copies of the memorandum and checklist into the docket for this notice.

[3] FAA Order 8260.43 (Flight Procedures Management Program) and FAA Order 8260.26 (Establishing Submission Cutoff Dates for Civil Instrument Procedures) contain additional information on this process. These orders are available on the FAA Web site.

Issued in Washington, DC, on September 22, 2017.

Steven L. Szukala,

Manager, Instrument Flight Procedure Group, Aeronautical Information Services.

[FR Doc. 2017–21626 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number: 170606545–7857–01]

RIN 0607–AA56

Foreign Trade Regulations (FTR): Request for Public Comments Regarding Standard and Routed Export Transactions

AGENCY: Bureau of the Census, Commerce Department.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is seeking public comments to perform a review of the requirements governing routed export transactions. In particular, the Census Bureau is interested in comments regarding the definition of a routed export transaction as well as the responsibilities of parties in routed export transactions. Routed export transactions are transactions in which the Foreign Principal Party in Interest (FPPI) controls the movement of the goods out of the country. There are a variety of reasons why the FPPI assumes this responsibility such as the use of a preferred carrier and the desire to not disclose the ultimate consignee to the U.S. Principal Party in Interest (USPPI), although the ultimate consignee is properly identified to the U.S. Government. Because the FPPI controls the movement of the goods in a routed transaction and cannot file Electronic Export Information (EEI), the Census Bureau requires the FPPI to authorize a U.S. authorized agent or the USPPI to file the EEI on its behalf. This ensures that the Census Bureau collects the statistical information.

DATES: Written comments must be received on or before December 5, 2017.

ADDRESSES: Please direct all written comments on this advance notice of proposed rulemaking to the Chief, International Trade Management Division, U.S. Census Bureau, Room 5K158, Washington, DC 20233–6010. You may also submit comments, identified by RIN number 0607–AA56, to the Federal e-Rulemaking Portal:

http://www.regulations.gov. All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commentor may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. The Census Bureau will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dale C. Kelly, Chief, International Trade Management Division, U.S. Census Bureau, Room 5K158, Washington, DC 20233–6010, by phone (301) 763–6937, by fax (301) 763–8835, or by email *dale.c.kelly@census.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau is responsible for collecting, compiling, and publishing export trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. The Automated Export System (AES), now part of the Automated Commercial Environment (ACE), is the primary instrument used for collecting export trade data. Through the AES, the Census Bureau collects Electronic Export Information (EEI), the electronic equivalent of the export data formerly collected on the Shipper's Export Declaration (SED), reported pursuant to the Foreign Trade Regulations (FTR), Title 15, Code of Federal Regulations (CFR), part 30. The EEI consists of data elements as set forth in 15 CFR 30.6 for an export shipment, and includes information such as the U.S. Principal Party in Interest's (USPPI's) name, address, and identification number, and detailed information concerning the exported product. The party responsible for the accuracy and timeliness of EEI data elements varies depending upon the type of export transaction; standard or routed. Through this notice, the Census Bureau is seeking public comments to perform a review of the requirements governing routed export transactions, a subset of export transactions, as detailed in the FTR, 15 CFR, part 30.

Request for Comments

The Census Bureau is soliciting comments on the clarity, usability, and any other matters related to the regulatory requirements for routed transactions. This will include the definition of a routed export transaction found in 15 CFR 30.1 as well as the general responsibilities of parties in routed export transactions as detailed in 15 CFR 30.3. Suggested questions are below; however, any pertinent feedback not captured by these questions is also welcome:

1. If you do not think that the definition of a routed export transaction in 15 CFR 30.1 is clearly stated, then what definition of routed export transaction would you suggest?

2. Should the Census Bureau modify the list of data elements at 15 CFR 30.3(e)(2) that the U.S. authorized agent is required to provide when filing the electronic export information? If so, what changes would you suggest?

3. Should the Census Bureau modify the list of data elements at 15 CFR 30.3(e)(1) that the U.S. Principal Party in Interest is required to provide to the U.S. Authorized agent? If so, what changes would you suggest?

4. The carrier's responsibilities under the FTR are the same in both standard and routed transactions. Does the FTR clearly communicate these responsibilities? If not, what clarification would you suggest?

5. The data elements that the USPPI and U.S authorized agent are required to provide are currently located in Section 30.3(e) of the FTR. However, additional data elements are needed to complete the AES filing. Below is a list of data elements that are required to be reported but for which a responsible party is not listed. Please provide comments on which party, the USPPI or the U.S. authorized agent, should report these data elements.

Hazardous material indicator	routed export transaction indicator	KPC number
FTZ identifier	vehicle title number	related party indicator
shipment reference number	vehicle title state code	export information code
VIN/product ID	filing option indicator	

6. Are the responsibilities of parties in a routed export transaction clearly stated? If not, what improvements would you suggest?

7. How could we improve the process to authorize filing in a routed export transaction?

8. How could the FTR be revised to align with the Bureau of Industry and Security's Export Administration Regulations on routed export transactions?

9. What changes would you suggest in Section 30.3 of the FTR that might improve the parties' understanding of the requirements of a routed export transaction?

10. What changes would you suggest in Section 30.3 of the FTR that might improve the parties' understanding of their roles in a routed or standard export transaction?

Dated: September 29, 2017.

Ron S. Jarmin,

Associate Director for Economic Programs, Performing the Non-Exclusive Functions and Duties of the Director, Bureau of the Census.

[FR Doc. 2017–21569 Filed 10–5–17; 8:45 am]

BILLING CODE 3510–07–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

[Docket No. CPSC–2017–0037]

Petition Requesting Rulemaking on Magnet Sets

AGENCY: Consumer Product Safety Commission.

ACTION: Petition for rulemaking.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) has received a petition requesting that the Commission initiate rulemaking under the Consumer Product Safety Act (CPSA) to adopt a safety standard for high-powered magnet sets. The Commission invites written comments concerning the petition.

DATES: Submit comments by December 5, 2017.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2017–0037, by any of the following methods:

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

comments by using the Federal eRulemaking Portal, as described above.

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

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

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* insert docket number CPSC–2017–0037 into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Rocky Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–6833; email: *RHammond@cpsc.gov.*

SUPPLEMENTARY INFORMATION: On August 17, 2017, Zen Magnets, LLC (petitioner) submitted a petition requesting that the Commission initiate rulemaking to adopt a safety standard for high-powered magnet sets under Sections 7 and 9 of the CPSA (15 U.S.C. 2056, 2058) to address the hazard associated with these products if ingested, aspirated, or otherwise inserted into the body.

The petitioner describes the product as small rare earth magnets of various shapes, sizes, and flux indices (*i.e.,* magnetic strength) that are commonly sold as sets designed to make sculptures, provide therapeutic benefits, or serve as educational or research tools. The petitioner states that there are magnet sets on the market that are approximately 5 millimeters in diameter and have flux indices greater than 50 kG^2mm^2. According to the petitioner, magnet sets are not designed, marketed, manufactured, or intended for use by children under the age of 14 years.

The petitioner asserts that high-powered magnet sets pose a risk of injury if misused in a way that results in ingesting, aspirating, or otherwise inserting more than one magnet into the body. The petitioner notes that one potential injury that can result from ingesting high-powered magnets is damage to gastrointestinal tissue.

The petitioner requests that CPSC promulgate a mandatory safety standard that includes the following:

- *Performance standards.* Require individual magnets and each magnet in a magnet set that fits entirely within the cylinder described in 16 CFR 1501.4 (small parts cylinder) to have a flux index of 50 kG^2mm^2 or less if the product is designed, marketed, or manufactured for children under the age of 14 years. Establish standards for magnet set packaging, such as requiring packaging to be difficult for children to open and assist users in determining whether all magnets are returned to the package after use. According to the petitioner, these requirements would limit the magnetic strength of magnets so that they would not attach across internal tissue if ingested and would assist users in limiting children's access to the magnets.
- *Warning requirements.*[1] Require magnet sets to bear warnings that conform to specific form requirements, warn of the ingestion hazard, and indicate the product is not intended for children. Require warnings on product packaging, including in a location that requires a user to see the warning when opening the package.
- *Instructional requirements.* Require magnet sets to include instructions that indicate how to avoid using the magnet set in a way that can lead to ingesting, aspirating, or inserting the magnets into the body and how to return magnets to the packaging.
- *Age restrictions.*[2] Require warnings and instructions for magnet sets to include an age recommendation of 14 years or older.

The Commission seeks comments concerning this petition.

The petition is available at: *http://www.regulations.gov,* under Docket No. CPSC–2017–0037, Supporting and Related Materials. Alternatively, interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2017–21534 Filed 10–5–17; 8:45 am]

BILLING CODE 6355–01–P

[1] The petitioner also requests that the Commission require purchasers to acknowledge having read product warnings and assent to the risk of injury when purchasing magnet sets online. Under Section 7 of the CPSA, the Commission may issue only performance requirements and requirements for warnings or instructions. Therefore, the Commission lacks authority to require these additional provisions.

[2] The petitioner also requests the following age restriction requirements for magnet sets that do not conform to the requested physical safety standards: (1) Prohibit the sale of magnet sets to users under 14 years old, and (2) require that only adults be permitted to buy magnet sets. Again, Section 7 of the CPSA authorizes the Commission to issue only performance requirements and warning requirements. Therefore, the Commission lacks authority to adopt these restrictions.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0356; FRL–9968–81–Region 7]

Approval of Missouri Air Quality Implementation Plans; Infrastructure SIP Requirements for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) revision from the State of Missouri for the 2008 Ozone National Ambient Air Quality Standard (NAAQS). Section 110 of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. In the ''Rules and Regulations'' section of this **Federal Register**, we are approving the state's SIP revisions as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received by November 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0356, to *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential

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

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7016, or by email at *casburn.tracey@epa.gov.*

SUPPLEMENTARY INFORMATION: This document proposes to take action on the State of Missouri Infrastructure SIP revision for the 2008 Ozone NAAQS. We have published a direct final rule approving the State's SIP revision (s) in the ''Rules and Regulations'' section of this **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

List of Subjects in 40 CFR Part 52

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

Dated: September 21, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

[FR Doc. 2017–21525 Filed 10–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2017–0515; FRL–9968–79–Region 7]

Approval of Missouri Air Quality Implementation Plans; Infrastructure SIP Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) revision from the State of Missouri for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). Section 110 of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. In the ''Rules and Regulations'' section of this **Federal Register**, we are approving the state's SIP revisions as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received by November 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2017–0515, to *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7016, or by email at *casburn.tracey@epa.gov.*

SUPPLEMENTARY INFORMATION: This document proposes to take action on the State of Missouri Infrastructure SIP revision for the 2010 SO_2 NAAQS. We have published a direct final rule approving the State's SIP revision(s) in the ''Rules and Regulations'' section of this **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 21, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

[FR Doc. 2017–21529 Filed 10–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2017–0101, FRL–9968–91–Region 2]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the State Implementation Plan (SIP) submitted by the New Jersey Department of Environmental Protection for New Jersey's enhanced inspection and maintenance (I/M) program. New Jersey has made several amendments to its I/M program to improve performance of the program and has requested that the SIP be revised to include these changes. Chief among the amendments the EPA is proposing to approve is New Jersey's amendment to its I/M program to discontinue two-speed idle tests on model year 1981–1995 light duty gasoline vehicles, idle tests on pre-1981 model year light duty gasoline vehicles, idle tests on heavy duty gasoline vehicles and gas cap leak testing. In addition, heavy duty gasoline vehicles equipped with on-board diagnostics (OBD) will be subject to OBD testing with this revision. The EPA is proposing approval of this SIP revision because it meets all applicable requirements of the Clean Air Act and the EPA's regulations and because the revision will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP.

DATES: Comments must be received on or before November 6, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2017–0101, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Reema Loutan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3760, or by email at *Loutan.Reema@epa.gov*.

Table of Contents

I. What action is the EPA proposing?

The EPA is proposing to approve a revision, submitted by New Jersey on September 16, 2016, to the New Jersey State Implementation Plan (SIP) pertaining to New Jersey's motor vehicle enhanced inspection and maintenance (I/M) program. New Jersey provided the EPA with documentation on the emission impacts that will result from changes to New Jersey's enhanced I/M program including a comparison to the EPA I/M performance standard. The revisions submitted by New Jersey include discontinuing the two-speed idle tests on model year 1981–1995 light duty gasoline vehicles, idle tests on pre-1981 model year light duty gasoline vehicles, idle tests on heavy duty gasoline vehicles and gas cap leak testing; requiring OBD testing for heavy duty gasoline vehicles equipped with on-board diagnostics (OBD); requiring inspections for commercial vehicles; and requiring that re-inspections of all vehicles be performed at New Jersey's decentralized I/M facilities.

II. Background Information

What are the Clean Air Act requirements for a moderate 8-hr ozone nonattainment area?

History of the Ozone Standard and Area Designations

In 1997, the EPA revised the health-based National Ambient Air Quality Standards (NAAQS) for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour period. The EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. The EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23857), the EPA finalized its attainment/nonattainment designations for areas across the country, including the State of New Jersey, with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Then on March 27, 2008 (73 FR 16436), the EPA revised the level of the 8-hour primary, health-based standard to a level of 0.075 parts per million (ppm), to provide increased protection for children and other ''at risk'' populations against an array of ozone-related adverse health effects such as decreased lung function and increased respiratory symptoms.

The New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area is composed of the following counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren. The New Jersey portion of the Philadelphia-Wilmington, Atlantic City, PA-DE-MD-NJ nonattainment area is composed of the following counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean and Salem. All of these counties in both areas were classified as moderate or above ozone nonattainment areas under the previous 1-hour ozone standard. These designations triggered the requirements under section 182(b) of the Clean Air Act (CAA) for moderate and above nonattainment areas, including a requirement to submit an enhanced motor vehicle I/M program.

CAA section 181(b)(2) requires the EPA Administrator to determine, based on an area's design value (which represents air quality in the area for the most recent 3-year period) as of an area's attainment deadline, whether an ozone nonattainment area attained the ozone standard by that date. The statute provides a mechanism by which states that meet certain criteria may request and be granted by the EPA Administrator a 1-year extension of an area's attainment deadline. The CAA also requires that areas that have not attained the standard by their attainment deadlines be reclassified to either the next ''highest'' classification (*e.g.,* marginal to moderate, moderate to

serious, etc.) or to the classifications applicable to the areas' design value.

Under the original designations for the 2008 ozone NAAQS in July 2012, New Jersey was classified as marginal. However, New Jersey failed to attain the 2008 ozone NAAQS by the applicable marginal attainment deadline of July 20, 2015. Therefore, on May 4, 2016 (81 FR 26697), the New York-Northern New Jersey-Long Island, NY-NJ-CT was reclassified from marginal to moderate for the 2008 ozone NAAQS, with a new 2008 ozone NAAQS attainment date of July 20, 2018. In that same action, the EPA determined that the Philadelphia Area and Southern New Jersey qualified for a 1-year extension of its attainment date, as provided in section 181(a)(5) of the CAA and interpreted by regulation at 40 CFR 51.1107, and granted the requested extension. The EPA established the new attainment date for the Philadelphia Area as July 20, 2016, to be based on ambient air quality monitoring data for the 2013–2015 monitoring period.

Demonstrating Noninterference With Attainment and Maintenance Under CAA Section 110(l)

Revisions to SIP-approved control measures must meet the requirements of CAA section 110(l) to be approved by the EPA. Section 110(l) states:

The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

The EPA interprets section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance, for one or more of the six criteria pollutants. The EPA also interprets section 110(l) to require a demonstration addressing all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. In the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(l), the EPA believes it is appropriate to allow states to substitute equivalent emissions reductions to compensate for any change to a SIP approved program, as long as actual emissions in the air are not increased. ''Equivalent'' emissions reductions mean reductions which are equal to or greater than those reductions achieved by the control measure approved in the active portion of the SIP. In order to show that compensating emissions reductions are equivalent, modeling or adequate justification must be provided. The compensating, equivalent reductions must represent actual, new emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure, in order to preserve the status quo level of emission in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP. See Section V for information on the state's 110(l) demonstration and I/M program benefits.

Clean Air Act Requirements for I/M Programs

The CAA requires certain states to implement an enhanced I/M program to detect gasoline-fueled motor vehicles that exhibit excessive emissions of certain air pollutants. The enhanced I/M program is intended to help states meet federal health-based NAAQS for ozone and carbon monoxide by requiring vehicles with excess emissions to have their emissions control systems repaired. Section 182 of the CAA requires I/M programs in those areas of the nation that are most impacted by carbon monoxide and ozone pollution.

On April 5, 2001, the EPA published in the **Federal Register** ''Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check'' (66 FR 18156). The revised I/M rule requires that electronic checks of the On-Board Diagnostics (OBD) system on model year 1996 and newer OBD-equipped motor vehicles be conducted as part of states' motor vehicle I/M programs. OBD is part of the sophisticated vehicle powertrain management system and is designed to detect engine and transmission problems that might cause vehicle emissions to exceed allowable limits.

The OBD system monitors the status of up to 11 emission control related subsystems by performing either continuous or periodic functional tests of specific components and vehicle conditions. The first three testing categories—misfire, fuel trim, and comprehensive components—are continuous, while the remaining eight only run after a certain set of conditions has been met. The algorithms for running these eight periodic monitors are unique to each manufacturer and involve such things as ambient temperature as well as driving conditions. Most vehicles will have at least five of the eight remaining monitors (catalyst, evaporative system, oxygen sensor, heated oxygen sensor, and exhaust gas recirculation or EGR system) while the remaining three (air conditioning, secondary air, and heated catalyst) are not necessarily applicable to all vehicles. When a vehicle is scanned at an OBD–I/M test site, these monitors can appear as either ''ready'' (meaning the monitor in question has been evaluated), ''not ready'' (meaning the monitor has not yet been evaluated), or ''not applicable'' (meaning the vehicle is not equipped with the component monitor in question).

The OBD system is also designed to fully evaluate the vehicle emissions control system. If the OBD system detects a problem that may cause vehicle emissions to exceed 1.5 times the Federal Test Procedure standards, then the Malfunction Indicator Light (MIL) or Check Engine Light, is illuminated. By turning on the MIL, the OBD system notifies the vehicle operator that an emission-related fault has been detected, and the vehicle should be repaired as soon as possible, thus reducing the harmful emissions contributed by that vehicle.

The EPA's revised OBD I/M rule applies to only those areas that are required to implement I/M programs under the CAA, which includes the aforementioned counties in New Jersey. This rule established a deadline of January 1, 2002 for states to begin performing OBD checks on 1996 and newer model OBD-equipped vehicles and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check.

New Jersey is required to have an enhanced I/M program pursuant to the CAA, and consequently has adopted, and has been implementing an enhanced I/M program statewide since December 13, 1999. On January 22, 2002, (67 FR 2811), the EPA fully approved New Jersey's enhanced I/M program and the State's performance standard modeling as meeting the applicable requirements of the CAA. Additional information on the EPA's final approval of New Jersey's enhanced I/M program can be found in the EPA's January 22, 2002, final approval notice.

III. What was included in New Jersey's SIP submittal?

On September 16, 2016, New Jersey submitted a revision to the State of New Jersey's I/M program SIP. The submittal consists of new rules and rule amendments to the New Jersey Department of Environmental Protection's rules at N.J.A.C. 7:27–14, 7:27–15, 7:27A–3, 7:27B–4, 7:27B–5 and the Motor Vehicle Commission rules at N.J.A.C. 13:20–7.1 through 7.6, 13:20–

26.12 and 26.16, 13:20–32.1 through 32.49, 13:20–33.1 through 33.50, Appendix C, N.J.A.C 13:20–43.1, 43.2 and 43.2A, 43.4 through 43.8, 43.14, 43.16, and N.J.A.C 13:20–44.2, 44.3 and 44.10.

The changes to New Jersey's I/M program include the elimination of exhaust emission tests or tailpipe testing for all gasoline motor vehicles. OBD testing will be required for all vehicles, including heavy duty gasoline vehicles, subject to inspection and required by the EPA to be equipped with an OBD system. The two-speed idle tests on model year 1981–1995 light duty gasoline vehicles, idle tests on pre-1981 model year light duty gasoline vehicles and idle tests on heavy duty gasoline vehicles will be discontinued.

The changes to New Jersey's I/M program also include procedures for diesel exhaust after-treatment checks, standards for fuel leak checks and replacement of the fuel cap leak test for gasoline-fueled vehicles with a visual gas cap check to ensure that the gas cap is present. NJ also submitted amendments to rules related to inspection requirements and inspection procedures. For heavy-duty diesel powered vehicles, New Jersey is repealing the rolling acceleration smoke opacity test, and the power brake smoke opacity test, and retaining only the snap acceleration smoke opacity test.

Enforcement related amendments include authorizing inspectors of both gasoline-fueled and diesel-powered motor vehicles to fail a vehicle if it is determined that there has been tampering with the vehicle's emission controls. The New Jersey Department of Environmental Protection may also impose penalties for tampering with emission controls on diesel vehicles. The New Jersey Diesel Emission Inspection Center inspection forms will be replaced with daily electronic reporting of diesel inspections, and private inspection facilities will submit diesel inspection information through an electronic portal or workstation.

New Jersey provided documentation on the emission impacts that will result from proposed changes to New Jersey's I/M program, including a comparison to the EPA I/M performance standard.

IV. What are the I/M performance standard requirements and does New Jersey's I/M program satisfy them?

As part of its final rule for I/M requirements, the EPA established a ''model'' program for areas that were required to implement enhanced I/M programs. This model program is termed by the EPA as the ''I/M performance standard'' and is defined by a specific set of program elements. The purpose of the performance standard is to provide a gauge by which the EPA can evaluate the adequacy and effectiveness of each state's enhanced I/M program. As such, states are required to demonstrate that their enhanced I/M programs achieve applicable area-wide emission levels for the pollutants of interest that are equal to, or lower than, those which would be realized by the implementation of the model program.

Originally, the EPA only designed one enhanced performance standard, as specified at 40 CFR 51.351, and required all enhanced I/M program areas to meet or exceed that standard. However, on September 18, 1995, the EPA promulgated the ''low'' enhanced performance standard. The low enhanced performance standard is a less stringent enhanced I/M performance standard established for those areas that have an approved SIP for Rate of Progress (ROP) for 1996, and do not have a disapproved plan for ROP for the period after 1996 or a disapproved plan for attainment of the air quality standards for ozone or carbon monoxide. New Jersey is currently demonstrating compliance with the CAA requirements for ROP and attainment and can therefore use the ''low'' enhanced performance standard. The revised performance standard modeling included as part of New Jersey's submittal is designed to show attainment of the low enhanced performance standard.

In accordance with the EPA's final rule for I/M requirements (40 CFR part 51, subpart S), a state must design and implement its enhanced I/M program such that it meets or exceeds a minimum performance standard. The performance standard is expressed as average grams per mile (gpm) or tons per day emission levels from area-wide highway mobile sources as a result of the enhanced I/M program. Areas must meet the performance standard for the pollutants that cause them to be subject to the enhanced I/M requirements. New Jersey was required to implement its enhanced I/M program because of its non-attainment status for two criteria air pollutants, ozone (of which volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) are precursors) and carbon monoxide.

The EPA's final rule on I/M requirements also requires that the equivalency of the emission levels achieved by the state's enhanced I/M program design compared to those of the performance standard must be demonstrated using the most current version of the EPA's mobile source emission model. The model New Jersey utilized in its analysis was MOVES2014, which was the most current version of the EPA's mobile source emission model at the time the SIP revisions were submitted.

Table 1 below compares the Low Enhanced I/M Performance Standards with New Jersey's existing and proposed enhanced I/M programs.

TABLE 1—PERFORMANCE STANDARD AND NEW JERSEY'S ENHANCED PROGRAM DESIGNS

Program element	Low enhanced performance standard	New Jersey's existing enhanced I/M program	New Jersey's new enhanced I/M program
Network Type	100% centralized	hybrid—70%, centralized/30%, decentralized.	hybrid—70%, centralized/30%, decentralized.
Program Start Date	1983	1974	1974.
Regulatory Class Coverage for Source types: 21, 31 and 32 [1].	100%, 94%, 88%	100%	100%, 97.0%, 94.0%.
Overall I/M Program Effectiveness for Source types: 21, 31 and 32 [2].	93.12%, 87.53%, 81.95%	96%	96.00%, 93.12%, 90.24%.
Test Frequency	Annual	Biennial	Biennial.
New Vehicle Exemption	None	5 Years	5 Years.
Model Year (MY) Coverage	1968 and later MY	all vehicles not specifically exempt.	1996 and later MY

TABLE 1—PERFORMANCE STANDARD AND NEW JERSEY'S ENHANCED PROGRAM DESIGNS—Continued

Program element	Low enhanced performance standard	New Jersey's existing enhanced I/M program	New Jersey's new enhanced I/M program
Vehicle Type Coverage	All light-duty gasoline-fueled vehicles and trucks (up to 8,500 lbs. GVWR).	All gasoline-fueled vehicles and trucks (both light and heavy duty vehicles).	All gasoline-fueled vehicles and trucks except non-OBD equipped vehicles greater than 8,500 lbs. GVWR.
Exhaust Emission Test	*Idle*—1968–2050 MY	*OBD*—1996 and later MY beginning 6/1/03, *Two-Speed Idle*—1981–1995 MY, *Idle*—pre-1981 and HDGVs.	*OBD*—1996 and later MY.
Evaporative System Function Checks.	N/A	*Gas Cap Testing*—1971—2000 MY inclusive (beginning calendar year 1998).	None.
Waiver Rate	3%	0%	0%.
Compliance Rate	96%	96%	96%.
Evaluation Date	July 2018	July 2018	July 2018.

I/M programs are designed and implemented to meet or exceed an applicable minimum federal performance standard. To determine whether a state's proposed program is projected to meet or exceed the relevant performance standard specified in 40 CFR 51.351, the state performed three modeling scenarios: [3] A no-I/M case, the proposed program, and the applicable I/M performance standard. More conventionally, performance standards are expressed as emission reductions, as compared to a no I/M scenario. The performance standard emission results will vary for each state due to the use of state-specific inputs such as registration distribution and fuel types. I/M jurisdictions are allowed to adopt alternate design features other than the EPA's ''model'' inputs and must show compliance with the applicable performance standard for the pollutant(s) that established I/M requirements.

In order to complete its performance standard and program evaluation modeling, New Jersey used the parameters and assumptions shown previously in Table 1, as well as the assumption and values in Table 2.

TABLE 2—MODELING ASSUMPTIONS

Modeling parameters	Value used for average summer runs (VOC and NO_X)
Maximum Temperature (F)	83.4.
Minimum Temperature (F)	63.8.
Relative Humidity range (%)	50–86.8.
Activity Inputs (VMT, Speed Age Distributions, Vehicle Populations, etc.).	New Jersey USEPA EIS MOVES Inputs for 2018.
Early NLEV and NJ Low Emission Vehicle Program without ZEV Mandate.	Yes.
Fuel Specifications	MOVES Defaults.

Table 3 shows the emissions reduction results from modeling the New Jersey I/M program compared to the EPA low enhanced performance standard. The emissions reductions achieved under New Jersey's new proposed I/M program meet or exceed those achieved under the performance standards.

TABLE 3—LOW ENHANCED PERFORMANCE STANDARD MODELING RESULTS

Program type	VOC + NO_X (tons/day)	Carbon monoxide (tons/day)
USEPA Low Enhanced Performance Standard (2002)	160.3	853.1
New Jersey, No I/M Program (2018)	163.7	935.6
New Jersey Proposed I/M Program (2018)	153.4	829.1

New Jersey has demonstrated that the changes to their enhanced I/M program will meet the performance standard requirements and will therefore continue to achieve emission reductions necessary to attain and maintain the NAAQS for all criteria pollutants. Specifically, New Jersey's modeling of the proposed I/M program resulted in

[1] Source Types included are: 21—passenger vehicles; 31—passenger trucks; 32—light commercial trucks.

[2] Overall I/M Program effectiveness is calculated as follows: Compliance Factor = percent compliance rate × (100 − percent waiver rate) × regulatory class coverage adjustment.

[3] Information on the three modeling scenarios can be found at Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model, EPA–420–B–14–006, January 2014.

emission reductions of 153.4 tons per day VOC and NO_X, and 829.1 tons/day CO which exceeds EPA's performance standards of 160.3 tons/day VOC and NO_X and 853.1 tons/day CO.

EPA's Evaluation

The EPA has reviewed New Jersey's changes to its enhanced I/M program that differ from the previous Federally approved program and has determined that those changes meet relevant performance standards and are therefore approvable into the SIP. The EPA will continue to evaluate New Jersey's enhanced I/M program effectiveness through the annual and biennial reports submitted by New Jersey in accordance with 40 CFR 51.366, ''Data Analysis and Reporting.''

V. What are New Jersey's I/M program benefits?

For SIP revisions that will or could potentially lead to a change in emissions or ambient concentrations of a pollutant or its precursors, the section 110(l) demonstration should address all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. As indicated in Table 4, the I/M Program Benefits modeling performed by New Jersey and verified by the EPA shows an emissions reduction benefit shortfall of 2 tons per day between New Jersey's existing and new enhanced I/M programs for ozone precursors (VOCs and NO_X), and 11.4 tons per day for carbon monoxide. Shortfall is a term of art that means there are lower projected benefits than what is currently in place. New Jersey needs to ''make up'' for this decrease in projected emission reductions resulting from the changes being made to the I/M program through the application of programs not already included in the 8-hour ozone SIP. The decrease in projected emission reductions from the changes in the I/M program is calculated by running the MOVES2014 model for both the existing and proposed new I/M programs for the evaluation year of 2018. New Jersey addresses the emissions benefit shortfall by using a portion of the emission benefits from the New Jersey Low Emission Vehicle Program (NJLEV). The emission benefits from the NJLEV program are quantified by additional MOVES2014 modeling that include scenarios with and without NJLEV inputs. The difference in emissions between these MOVES2014 scenarios represents the estimates of the NJLEV emission benefits. The emission reduction benefits from the NJLEV program are considered contemporaneous because a new phase of the NJLEV rules began in 2015 to incorporate more stringent evaporative and emissions standards. New vehicles sold in New Jersey are meeting these more stringent NJLEV rules ahead of EPA Tier 3 standards which are equivalent to NJLEV. Additional control measures and strategies that New Jersey is relying on to further improve air quality are:

Control of Petroleum Storage Tanks (N.J.A.C 7:27–16.2)
Electric Generating Rule (N.J.A.C 7:27–4.2, 10.2, 19.4)
Portable fuel Containers (N.J.A.C 7:27–24)
Voluntary Retrofits of Ferries (DERA/CMAQ Grants)
Phase 2 HEDD Rule for Electric Generating Units (N.J.A.C 7:27–19.29)
Continuation of the I/M Program for Diesel Vehicles (N.J.A.C 7:27–14)

A summary of the I/M Program benefits modeling results is found in Table 4.

TABLE 4—I/M PROGRAM BENEFITS MODELING RESULTS—BASED ON 2018 STATEWIDE ONROAD EMISSION DATA

Model scenario	Emission reductions, VOC + NO_X (tons/day)	Emission reductions carbon monoxide (tons/day)
A. New Jersey Existing I/M Program Without the NJLEV Program	154.0	867.2
B. New Jersey Proposed I/M Program Without the NJLEV Program	156.0	878.6
C. New Jersey Proposed I/M Program with NJLEV Program	153.4	829.1
D. NJLEV Benefits for 2009 Model Year That Were Claimed in a Previous Ozone Attainment Demonstration SIP	0.3	5.1
E. SIP Emission Benefits Shortfall (From I/M Program Changes) (B–A)	2.0	11.4
F. NJLEV Benefits (B–C)	2.6	49.5
G. NJLEV Benefits Not Previously Claimed (F–D)	2.3	44.4

EPA's Evaluation

Based on the above discussion and the state's 110(l) demonstration, EPA believes that the changes to the New Jersey's I/M program will not interfere with attainment or maintenance of any of the NAAQS in either the Northern or Southern New Jersey nonattainment areas and would not interfere with any other applicable requirement of the CAA, and thus, are approvable under CAA section 110(l).

VI. What are the EPA's conclusions?

The EPA's review of the materials submitted indicates that New Jersey has revised its I/M program in accordance with the requirements of the CAA, 40 CFR part 51 and all of the EPA's technical requirements for an approvable Enhanced I/M program. The EPA is proposing to approve the rules and rule amendments to the New Jersey Department of Environmental Protection's rules at N.J.A.C. 7:27–14, 7:27–15, 7:27A–3, 7:27B–4, 7:27B–5 and the Motor Vehicle Commission rules at N.J.A.C. 13:20–7.1 through 7.6, 13:20–26.12 and 26.16, 13:20–32.1 through 32.49, 13:20–33.1 through 33.50, Appendix C, N.J.A.C 13:20–43.1, 43.2 and 43.2A, 43.4 through 43.8, 43.14, 43.16, and N.J.A.C 13:20–44.2, 44.3 and 44.10. The CAA gives states the discretion in program planning to implement programs of the state's choosing as long as necessary emission reductions are met.

VII. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 11, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: September 6, 2017.

Catherine R. McCabe,

Acting Regional Administrator, Region 2.

[FR Doc. 2017–21521 Filed 10–5–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2016–0121; 4500030113]

RIN 1018–BB46

Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination on the Proposed Threatened Status for the Louisiana Pinesnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determination of whether to list the Louisiana pinesnake (*Pituophis ruthveni*) as a threatened species. We also reopen the comment period on the proposed rule to list the species for an additional 30 days. We are taking this action based on substantial disagreement regarding available information related to the interpretation of the available survey data used to determine the Louisiana pinesnake's status and trends. Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final rule. We will submit a final listing determination to the **Federal Register** for publication on or before April 6, 2018.

DATES: The comment period for the proposed rule published October 6, 2016 (81 FR 69454), is reopened. We will accept comments received or postmarked on or before November 6, 2017. If you comment using the Federal eRulemaking Portal (see **ADDRESSES**), you must submit your comments by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2016–0121. Copies of the proposed rule are also available at *https://www.fws.gov/southeast/lafayette/.*

Comment submission: You may submit comments by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the Search box, enter the docket number for this proposed rule, which is FWS–R4–ES–2016–0121. Then click on the Search button. You may submit a comment by clicking on ''Comment Now!'' Please ensure that you have found the correct rulemaking before submitting your comment.

2. *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2016–0121; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Joseph Ranson, Field Supervisor, U.S. Fish and Wildlife Service, Louisiana Ecological Services Office, 646 Cajundome Blvd., Suite 400, Lafayette, LA; telephone 337–291–3101. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2016 (81 FR 69454), we published under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), a proposed rule to add the Louisiana pinesnake as a threatened species to the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (50 CFR 17.11(h)). That

proposal had a 60-day comment period, ending December 5, 2016. We also solicited and received independent scientific review of the information contained in the proposed rule from peer reviewers with expertise in the Louisiana pinesnake or similar species, in accordance with our July 1, 1994, peer review policy (59 FR 34270). For a description of previous Federal actions concerning the Louisiana pinesnake, please refer to the proposed listing rule.

Section 4(b)(6) of the Act and its implementing regulations at 50 CFR 424.17(a) require that we take one of three actions within 1 year of a proposed listing and concurrent proposed designation of critical habitat: (1) Finalize the proposed rule; (2) withdraw the proposed rule; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination.

Since the publication of the October 6, 2016, proposed listing rule (81 FR 69454), there has been substantial disagreement regarding available information related to the interpretation of the available survey data used to determine the Louisiana pinesnake's status and trends. Specifically, during the public comment period, we received multiple comments on the proposed listing and the sufficiency or accuracy of the available data used to support it. In particular, the comments reflected significant disagreement, including from one of the peer reviewers, regarding the interpretation of the available data used to determine the Louisiana pinesnake's status and trends, including the current conservation status of the Louisiana pinesnake in Louisiana and, particularly, in Texas. Therefore, in consideration of these disagreements, we have determined that a 6-month extension of the final determination for this rulemaking is necessary, and we are hereby extending the final determination for 6 months in order to solicit and consider additional information that will help to clarify these issues and to fully analyze data that are relevant to our final listing determination. With this 6-month extension, we will make a final determination on the proposed rule no later than April 6, 2018.

Information Requested

We will accept written comments and information during this reopened comment period on our proposed listing rule. We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal be as accurate as possible and based on the best available scientific and commercial data.

We are particularly interested in new information and comments regarding:

(1) The interpretation of scientific literature in the proposed rulemaking, and whether we overlooked any scientific literature in our analysis. In particular, some commenters expressed concern that there is insufficient scientific information (survey data in particular) to adequately assess the conservation status of the species, while others expressed concern that the available scientific information supports an endangered determination.

(2) Additional survey information, including maps, throughout the Louisiana pinesnake's range, especially for Texas.

(3) Trapping results to determine the Louisiana pinesnake's estimated occupied habitat areas (EOHAs). During the peer review period, peer reviewers were critical of methods used to determine EOHAs and questioned the interpretation that resulted from our analysis.

If you previously submitted comments or information on the October 6, 2016, proposed rule (81 FR 69454), please do not resubmit them. We have incorporated previously submitted comments into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning the proposed listing will take into consideration all written comments and any additional information we receive.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**, above. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing the 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, Louisiana Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 30, 2017.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2017–21591 Filed 10–5–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BF82

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Essential Fish Habitat

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The New England Fishery Management Council has submitted the Omnibus Essential Fish Habitat Amendment 2, incorporating an Environmental Impact Statement, for review by the Secretary of Commerce. NMFS is requesting comments from the public on the Omnibus Amendment, which was developed by the Council to revise the essential fish habitat designations for each Council-managed species, designate Habitat Areas of Particular Concern, revise the system of essential fish habitat management areas, address seasonal groundfish spawning spatial management, establish Dedicated Habitat Research Areas, and identify actions that can be modified by framework and other administrative concerns relating to the Amendment. The intended effect of this action is to ensure the Council's fishery management plans comply with the Magnuson-Stevens Fishery Conservation and Management Act's requirements to routinely review and update essential fish habitat designations and to continue to minimize to the extent practicable the adverse effects of fishing on such designated habitat.

DATES: Public comments must be received on or before December 5, 2017.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0123, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0123* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Omnibus EFH Amendment.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter may be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the Omnibus Amendment, including its Environmental Impact Statement, preliminary Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EIS/RIR/IRFA), are available from the New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EIS/RIR/IRFA is also accessible via the Internet at: *www.greateratlantic.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Senior Fishery Program Specialist, (978) 281–9218; fax: (978) 281–9135, *Moira.Kelly@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Essential Fish Habitat Amendment 2 (Omnibus EFH Amendment) was initiated to review and update the essential fish habitat (EFH) designations, the habitat area of particular concern (HAPC) designations, and the habitat-related spatial management program for the New England Fishery Management Council's suite of fishery management plans (FMP). Omnibus EFH Amendment was developed over several years, with the first half dedicated to updating the EFH designations and consideration of HAPCs. The remainder of the development was focused on revising the system of year-round closed areas, which restrict some types of fishing gear in order to protect vulnerable habitat and establish a system of Dedicated Habitat Research Areas (DHRAs). Prior to consideration of management area changes, the Council determined it was important to consider revisions to the year-round groundfish closures together because of the substantial overlap with the habitat management closures.

The Council established 10 goals and 14 objectives to guide the development of this action. Goals 1–8 were established in 2004, at the onset of the Amendment's development, and focus on identification of EFH, fishing and non-fishing activities that may adversely affect EFH, and the development of measures and management programs to conserve, protect, and enhance EFH and to minimize to the extent practicable the adverse effects of fishing on EFH. The additional goals (9 and 10) were developed after the Council voted to incorporate revision of the groundfish closures in the Amendment. These goals are focused on enhancing groundfish productivity and maximizing the societal net benefits from groundfish.

The 14 objectives map to 1 or more of the Amendment's goals and provide more specific guidance on how to achieve that goal. For example, the objectives include identifying new data sources upon which to base the EFH designations (Objective A), developing analytical tools for EFH designation, minimization of adverse impacts, and monitoring the effectiveness of measures (Objective D; Goals 1, 3, and 5). Other objectives include modifying fishing methods to reduce impacts (Objective E; Goal 4), supporting the restoration of degraded habitat (Objective F; Goal 4), improved groundfish spawning protection, including protection of localized spawning contingents, and improved protection of critical groundfish habitats (Goals 9 and 10). Please see Volume 1, Section 3 of the in the EIS for more details on the goals and objectives of this Amendment.

Proposed Measures

1. Essential Fish Habitat Designations

The Council proposes to update the EFH designations for all species and all life stages for which more recent information is available. EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH designations consist of two complementary elements, the text descriptions, and the map representations. Any specific area is only considered EFH if it is displayed in the EFH map and meets the conditions defined in the text description. Thus, the two components of EFH must be used in conjunction with one another when applying EFH designations to fishery management, EFH consultation, or other questions.

A full description of the updated designations, including maps of the designations, can be found in Volume 2 of the EIS. In addition, a thorough discussion of the methods and approaches used to assemble the designations is provided in the EIS. The quality and quantity of information varied by species, so a single approach for all Council-managed species and lifestage is not possible. The Council relied upon the best available scientific information for each species.

2. Habitat Areas of Particular Concern

Habitat Areas of Particular Concern (HAPC) are intended to highlight specific areas of EFH that require additional consideration. HAPC designations should be based on one or more of the following criteria: (1) The importance of the ecological function provided by the habitat, including both the historical and current ecological function; (2) the extent to which the habitat is sensitive to human-induced environmental degradation; (3) whether, and to what extent, development activities are, or will be, stressing the habitat type; and (4) the rarity of the habitat type (50 CFR 600.815(a)(8)). The Council considered proposals from the public using additional criteria in designating HAPCs, including whether the designation would improve fisheries management in the exclusive economic zone, include EFH for more than one Council-managed species, include juvenile cod EFH, and meet more than one of the regulatory HAPC criteria listed above. Discussion of the areas considered and the eight criteria listed above can be found in Volume 2 of the EIS.

The Council is recommending that the current Atlantic Salmon HAPC and the Northern Edge Juvenile Cod HAPC remain as designated because they continue to meet the criteria listed above. In addition, the Council is recommending the following areas as new HAPCs: Inshore Juvenile Cod HAPC; Great South Channel Juvenile Cod HAPC; Cashes Ledge HAPC; Jeffreys Ledge/Stellwagen Bank HAPC; Bear and Retriever Seamounts; and

eleven canyon/canyon complexes (Heezen; Lydonia, Gilbert, and Oceanographers; Hydrographer; Veatch; Alvin, and Atlantis; Hudson; Toms, Middle Toms, and Hendrickson; Wilmington; Baltimore; Washington; and Norfolk). Maps and coordinates for the HAPC designations can be found in Volume 2 of the EIS.

3. Spatial Management for Adverse Effects Minimization

The Magnuson-Stevens Act requires that fishery management plans evaluate and minimize, to the extent practicable, the adverse effects of fishing on designated EFH. The evaluation should consider the effects of each fishing activity on each type of habitat found with EFH. Councils must prevent, mitigate, or minimize any adverse effects from fishing on EFH, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature. To that end, the Council is recommending the following habitat management areas (HMA) and restrictions. Full descriptions, including maps and coordinates of the Council's recommendations, can be found in Volume 3 of the EIS.

In the Eastern Gulf of Maine, the Council recommends establishing the Small Eastern Maine HMA, closed to all mobile bottom-tending gears.

In the Central Gulf of Maine, the Council recommends maintaining the existing Cashes Ledge Groundfish Closure Area, with its current fishing restrictions and exemptions; modifying the existing Jeffreys Bank and Cashes Ledge Habitat Closure Areas, with their current fishing restrictions and exemptions; establishing the Fippennies Ledge HMA, closed to mobile bottom-tending gear; and establishing the Ammen Rock HMA, closed to all fishing except lobster traps.

In the Western Gulf of Maine, the Council recommends maintaining the existing Western Gulf of Maine Habitat Closure Area, closed to mobile bottom-tending gears, and modifying the eastern boundary of the Western Gulf of Maine Closure Area to align with the habitat closure area, while maintaining the current fishing restrictions and requirements for both areas. The Council also recommends creating an exemption area within the northwest corner of those closures for shrimp trawls and designating the existing Roller Gear Restricted Area requirements as a habitat protection measure.

On Georges Bank, the Council recommends removing the year-round and habitat closures of Closed Areas I and II and replacing them with three new areas: (1) The Georges Shoal 2 HMA, closed to mobile bottom-tending gear, with a one-year delay in closure to hydraulic clam dredges; (2) the Northern Edge Reduced Impact HMA, closed to mobile bottom-tending gear, with two exceptions described below; and (3) the Northern Edge Mobile Bottom-Tending Gear HMA, closed to mobile bottom-tending gear without any exceptions. Exemptions to the Reduced Impact HMA are scallop dredge fishing in accordance with the scallop rotational area program, and trawl fishing to the west of the existing western boundary of Closed Area II (67°20′ W. long.), in what is now the Eastern Georges Bank Special Access Program. In addition, any portions of the Closed Area II groundfish closed area north of 41°30′ N. lat. would be closed to scallop fishing between June 15 and October 31 of each year. The remainder of the existing Closed Area I Habitat and Groundfish Closure Areas and Closed Area II Groundfish Closure Area would be opened, except for seasonal spawning protection as described below.

In the Great South Channel, the Council recommends establishing the Great South Channel HMA, closed to mobile bottom-tending gear. Closure to hydraulic clam dredges would be delayed for one year, outside of the northeast corner of the area. The Council also recommends establishing two HMAs on Cox Ledge, closed to hydraulic clam dredges, and requiring no ground cables on trawls fishing in the areas. The Nantucket Lightship Habitat Closure Area and the Nantucket Lightship Closed Area would be removed.

4. Groundfish Spawning Protections

In the Gulf of Maine, the Council recommends establishing the Massachusetts Bay Cod Spawning Protection Area from November through January of each year and closing statistical block 125 for the first half of April each year (the ''Spring Massachusetts Bay Spawning Protection Area.'') The Massachusetts Bay Spawning Protection Area would be closed to all vessels, except those that do not have a Federal Northeast multispecies permit and are fishing exclusively in state waters; that are fishing with exempted gears (Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, shrimp trawls (with a properly configured grate), and surfclam and ocean quahog dredges); charter/party or recreational fishing vessels, provided that pelagic hook and line gear is used, and there is no retention of regulated species or ocean pout; and vessels that are transiting. The Spring Massachusetts Bay Spawning Protection Area would be closed to all vessels, except vessels that do not have a Federal Northeast multispecies permit and are fishing exclusively in state waters; vessels fishing with exempted gears (Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, shrimp trawls (with a properly configured grate), and surfclam and ocean quahog dredges); vessels participating in the mid-water trawl exempted fishery; vessels participating in the purse seine exempted fishery, sea scallop dredge gear when under a scallop day-at-sea; vessels lawfully in a scallop dredge exemption area; vessels that are transiting; charter and party vessels; and recreational vessels.

On Georges Bank, the Council recommends converting the existing groundfish closure area, Closed Area II, and the existing habitat area, Closed Area I North, into seasonal closures. Both areas would be closed from February 1 through April 15 of each year to all commercial and recreational gears that catch groundfish, except scallop dredges, vessels fishing with exempted gears, vessels participating in the mid-water trawl fishery, and vessels that are transiting.

5. Dedicated Habitat Research Areas

Dedicated Habitat Research Areas (DHRAs) are intended to facilitate more focused research on fishing gear impacts on habitat or other issues related to habitat and fisheries productivity. The Council is recommending two DHRAs in this amendment. The Stellwagen DHRA would be implemented with the same restrictions as the Western Gulf of Maine closed areas described above. The Georges Bank DHRA, which is the same footprint as the current Closed Area I South Habitat Closure Area, would be closed to mobile bottom-tending gear.

The Council is recommending these DHRAs in combination with a three-year sunset provision. If approved, three years after implementation, the Regional Administrator would initiate a review of the DHRAs and the research activity being conducted within them. If no research has been conducted or initiated to further the Council's habitat-related questions, the Regional Administrator may, after consultation with the Council, remove the DHRA designation.

6. Framework and Administrative Actions

The Council is recommending three administrative actions as part of the Omnibus EFH Amendment. First, additional spatial management measures, including designation or removal of HMAs and changes to fishing restrictions within HMAs, would be added to the list of frameworkable items for all fisheries. Second, a strategic process would be established to routinely evaluate the boundaries, scope, characteristics, and timing of the habitat and spawning protection areas, including a technical review that evaluates the performance of these areas at 10-year intervals following implementation. A list of questions to guide this review are provided in Volume 3 of the EIS. Third, building on what the Council learned during the review of the performance of existing closed areas and the development of new EFH management in this amendment, the Council would identify and periodically revise research priorities to improve habitat and spawning area monitoring.

Public Comment Instructions

Public comments on the Omnibus EFH Amendment and its incorporated documents may be submitted through the end of the comment period stated in this notice of availability. A proposed rule to implement the Amendment, including draft regulatory text, will be published in the **Federal Register** for public comment. Public comments on the proposed rule received by the end of the comment period provided in this notice of availability will be considered in the approval/disapproval decision on the amendment. All comments received by December 5, 2017, whether specifically directed to the Omnibus EFH Amendment or the proposed rule for this amendment, will be considered in the approval/disapproval decision on the Omnibus EFH Amendment. Comments received after that date will not be considered in the decision to approve or disapprove the Amendment. To be considered, comments must be received by close of business on the last day of the comment period.

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

Dated: October 3, 2017.

Alan D. Risenhoover,

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

[FR Doc. 2017–21560 Filed 10–5–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 82, No. 193
Friday, October 6, 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

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Agricultural Labor Survey. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by December 5, 2017 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0109, by any of the following methods:

- *Email: OMBofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: R. Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Agricultural Labor Survey.

OMB Control Number: 0535–0109.

Expiration Date of Approval: March 31, 2018.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Agricultural Labor Survey provides quarterly statistics on the number of agricultural workers, hours worked, and wage rates. Number of workers and hours worked are used to estimate agricultural productivity; wage rates are used in the administration of the H–2A Program and for setting Adverse Effect Wage Rates. Survey data are also used to carry out provisions of the Agricultural Adjustment Act. NASS intends to request that the survey be approved for another 3 years.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: This information collection consists of three individual surveys. In April, NASS will collect data for the January and April quarters and in October, NASS will collect data for both the July and October quarters. Following these two surveys NASS will re-contact approximately 500 operators to conduct quality control surveys to help insure the quality of the data collected. NASS also plans to conduct some cognitive testing during this renewal period. The public reporting burden for this information collection is estimated to average 5 minutes for the quality control surveys and 30 minutes per response in April and October.

Respondents: Farms and businesses.

Estimated Number of Respondents: 15,000.

Estimated Total Annual Burden on Respondents: 15,000 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; specifically, on the benefits of collection of hourly base rate of pay, piece rate of pay, and experience level and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, September 21, 2017.

R. Renee Picanso,

Associate Administrator.

[FR Doc. 2017–21624 Filed 10–5–17; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the Rural Energy for America Program (REAP).

DATES: Comments on this notice must be received by December 5, 2017 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Tony Crooks, Rural Business-Cooperative Service, USDA, STOP 3225, 1400 Independence Ave. SW., Washington, DC 20250–3225, Telephone (202) 205–9322.

SUPPLEMENTARY INFORMATION:

Title: Rural Energy for America Program.

OMB Number: 0570–0067.

Expiration Date of Approval: February 28, 2018.

Type of Request: Revision of a currently approved information collection.

Abstract: REAP provides grants and loan guarantees to eligible agricultural producers and rural small businesses for the purchase of renewable energy systems and the implementation of energy efficiency improvements. REAP also provides grants for eligible entities to conduct energy audits and provide and renewable energy development assistance. This notice is specific to the information collection required for REAP.

The collection of information is vital for Rural Development to make informed decisions regarding the eligibility of applicants and borrowers, establish selection priorities among competing applicants ensure compliance with applicable Rural Development regulations, and effectively monitor the grantees and borrowers activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. This information will be used to determine applicant eligibility, to determine project eligibility and feasibility, and to ensure that grantees/borrowers operate on a sound basis and use funds for authorized purposes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.6 hours per response.

Respondents: Agricultural Producers and Rural Small Businesses.

Estimated Number of Respondents: 1,997.

Estimated Number of Responses per Respondent: 25.

Estimated Number of Responses: 49,925.

Estimated Total Annual Burden on Respondents: 129,805.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0040.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of USDA, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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 may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 28, 2017.

Chad Parker,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2017–21568 Filed 10–5–17; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–44–2017]

Foreign-Trade Zone (FTZ) 265—Conroe, Texas; Authorization of Production Activity; Bauer Manufacturing LLC dba NEORig; (Stationary Oil/Gas Drilling Rigs); Conroe, Texas

On June 5, 2017, the City of Conroe, grantee of FTZ 265, submitted a notification of proposed production activity to the FTZ Board on behalf of Bauer Manufacturing LLC dba NEORig, within Site 1 of FTZ 265, in Conroe, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 30821–30822, July 3, 2017). On October 3, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: October 3, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–21595 Filed 10–5–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-The-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015

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 new pneumatic off-the-road tires (OTR Tires) from the People's Republic of China (PRC). The period of review (POR) is January 1, 2015, through December 31, 2015. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 6, 2017.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang or Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5484 or (202) 482–1396 respectively.

Scope of the Order

The products covered by the order are new pneumatic tires designed for off-the-road (OTR) and off-highway use. For a full description of the scope of this order, *see* the Preliminary Decision Memorandum.[1]

[1] *See* ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative

Methodology

On September 4, 2008, the Department issued a countervailing duty order on new pneumatic tires designed for OTR and off-highway use.[2] The Department is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy, (*i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient) and that the subsidy is specific.[3] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts otherwise available pursuant to sections 776(a) and (b) of the Act, *see* the accompanying Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is provided at Appendix I 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 Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

As a result of this review, we preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Guizhou Tyre Co., Ltd./Guizhou Tyre Import & Export Co., Ltd	39.10
Xuzhou Xugong Tyres Co. Ltd	91.94
Non-Selected Companies Under Review	39.10

Preliminary Rate for Non-Selected Companies Under Review

The statute and the Department's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where the Department limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, the Department normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs the Department as a general rule to calculate an all others rate using the weighted average of the subsidy rates established for the producers/exporters individually examined, excluding any zero, *de minimis,* or rates based entirely on facts available. In this review, the preliminary subsidy rates calculated for Guizhou Tyre and its cross-owned affiliates are above *de minimis* and are not based entirely on facts available. Therefore, for the companies for which a review was requested that were not selected as mandatory company respondents and which we are not finding to be cross-owned with the mandatory company respondents, we are preliminarily basing the subsidy rate on the subsidy rate calculated for Guizhou Tyre. For a list of these non-selected companies, please see Appendix II to this notice.

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[4] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[5] Rebuttal briefs must be limited to issues raised in the case briefs.[6] Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[8] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[9] Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.[10] All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Assessment Rates and Cash Deposit Requirement

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, the Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as

Review of Certain New Pneumatic Off-The-Road Tires from the People's Republic of China; 2015,'' dated concurrently with this notice (Preliminary Decision Memorandum) and hereby adopted by this notice.

[2] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Countervailing Duty Order,* 73 FR 51627 (September 4, 2008) (*OTR CVD Order*).

[3] *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.

[4] *See* 19 CFR 351.224(b).

[5] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l).

[6] *See* 19 CFR 351.309(d)(2).

[7] *See* 19 CFR 351.309(c)(2) and (d)(2).

[8] *See* 19 CFR 351.310(c).

[9] *See* 19 CFR 351.310.

[10] *See* 19 CFR 351.310(c).

appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results of review are issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: October 2, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Use of Facts otherwise Available and Application of Adverse Inferences
V. Application of the Countervailing Duty Law to Imports from the PRC
VI. Subsidies Valuation
VII. Interest Rate Benchmarks, Discount Rates, Input, Electricity, and Land Benchmarks
VIII. Analysis of Programs
IX. Disclosure and Public Comment
X. Verification
XI. Conclusion

Appendix II

Companies Not Selected for Review

1. Aeolus Tyre Co., Ltd.
2. Air Sea Transport Inc
3. Air Sea Worldwide Logistics Ltd
4. AM Global Shipping Lines
5. Apex Maritime Co Ltd
6. Apex Maritime Thailand Co Ltd
7. BDP Intl LTD China
8. Beijing Kang Jie Kong Intl Cargo Agent Co Ltd
9. C&D Intl Freight Forward Inc
10. Caesar Intl Logistics Co Ltd
11. Caterpillar & Paving Products Xuzhou Ltd
12. CH Robinson Freight Services China LTD
13. Changzhou Kafurter Machinery Co Ltd
14. Cheng Shin Rubber (Xiamen) Ind Ltd
15. China Intl Freight Co Ltd
16. Chonche Auto Double Happiness Tyre Corp Ltd
17. City Ocean Logistics Co Ltd
18. Consolidator Intl Co Ltd
19. Crowntyre Industrial Co. Ltd
20. CTS Intl Logistics Corp
21. Daewoo Intl Corp
22. De Well Container Shipping Inc
23. Double Coin Holdings Ltd; Double Coin Group Shanghai Donghai Tyre Co., Ltd; and Double Coin Group Rugao Tyre Co., Ltd. (collectively ''Double Coin'')
24. England Logistics (Qingdao) Co Ltd
25. Extra Type Co Ltd
26. Fedex International Freight Forwarding Services Shanghai Co Ltd
27. FG Intl Logistics Ltd
28. Global Container Line
29. Honour Lane Shipping
30. Innova Rubber Co., Ltd.
31. Inspire Intl Enterprise Co Ltd
32. JHJ Intl Transportation Co
33. Jiangsu Feichi Co. Ltd.
34. Kenda Rubber (China) Co Ltd
35. KS Holding Limited/KS Resources Limited
36. Laizhou Xiongying Rubber Industry Co., Ltd.
37. Landmax Intl Co Ltd
38. LF Logistics China Co Ltd
39. Mai Shandong Radial Tyre Co., Ltd.
40. Maine Industrial Tire LLC
41. Master Intl Logistics Co Ltd
42. Melton Tire Co. Ltd
43. Merityre Specialists Ltd
44. Mid-America Overseas Shanghai Ltd
45. Omni Exports Ltd
46. Orient Express Container Co Ltd
47. Oriental Tyre Technology Limited
48. Pudong Prime Intl Logistics Inc
49. Q&J Industrial Group Co Ltd
50. Qingdao Aotai Rubber Co Ltd
51. Qingdao Apex Shipping
52. Qingdao Chengtai Handtruck Co Ltd
53. Qingdao Chunangtong Founding Co Ltd
54. Qingdao Free Trade Zone Full-World International Trading Co., Ltd.
55. Qingdao Haojia (Xinhai) Tyre Co.
56. Qingdao Haomai Hongyi Mold Co Ltd
57. Qingdao J&G Intl Trading Co Ltd
58. Qingdao Jinhaoyang International Co. Ltd
59. Qingdao Kaoyoung Intl Logistics Co Ltd
60. Qingdao Milestone Tyres Co Ltd.
61. Qingdao Nexen Co Ltd
62. Qingdao Qihang Tyre Co.
63. Qingdao Qizhou Rubber Co., Ltd.
64. Qingdao Shijikunyuan Intl Co Ltd
65. Qingdao Sinorient International Ltd.
66. Qingdao Taifa Group Imp. And Exp. Co., Ltd./Qingdao Taifa Group Co., Ltd.
67. Qingdao Wonderland
68. Qingdao Zhenhua Barrow Manufacturing Co., Ltd.
69. Rich Shipping Company
70. RS Logistics Ltd
71. Schenker China Ltd
72. Seastar Intl Enterprise Ltd
73. SGL Logistics South China Ltd
74. Shandong Huitong Tyre Co., Ltd.
75. Shandong Linglong Tyre Co., Ltd.
76. Shandong Taishan Tyre Co. Ltd.
77. Shanghai Cartec Industrial & Trading Co Ltd
78. Shanghai Grand Sound Intl Transportation Co Ltd
79. Shanghai Hua Shen Imp & Exp Co Ltd
80. Shanghai Part-Rich Auto Parts Co Ltd
81. Shanghai TCH Metals & Machinery Co Ltd
82. Shantou Zhisheng Plastic Co Ltd
83. Shiyan Desizheng Industry & Trade Co., Ltd.
84. Techking Tires Limited
85. Thi Group (Shanghai) Ltd
86. Tianjin Leviathan International Trade Co., Ltd.
87. Tianjin United Tire & Rubber International Co., Ltd.
88. Tianjin Wanda Tyre Group Co.
89. Tianshui Hailin Import and Export Corporation
90. Tiremart Qingdao Inc
91. Translink Shipping Inc
92. Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.
93. Trelleborg Wheel Systems Hebei Co
94. Triangle Tyre Co. Ltd.
95. Universal Shipping Inc
96. UTI China Ltd
97. Weifang Jintongda Tyre Co., Ltd.
98. Weihai Zhongwei Rubber Co., Ltd.
99. Weiss-Rohlig China Co Ltd
100. World Bridge Logistics Co Ltd
101. World Tyres Ltd.
102. Xiamen Ying Hong Import & Export Trade Co Ltd
103. Xuzhou Xugong Tyres Co Ltd; Xuzhou Armour Rubber Company Ltd.; HK Lande International Investment Limited; Armour Tires Inc. (collectively ''Xugong'')
104. Yoho Holding
105. Zheijiang Wheel World Industrial Co Ltd
106. Zhejiang Xinchang Zhongya Industry Co., Ltd.
107. Zhongce Rubber Group Company Limited
108. ZPH Industrial Ltd

[FR Doc. 2017–21586 Filed 10–5–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 84–28A12]

Export Trade Certificate of Review

ACTION: Notice of Application for an Amended Export Trade Certificate of Review by Northwest Fruit Exporters, Application No. 84–28A12.

SUMMARY: The Secretary of Commerce, through the International Trade Administration, Office of Trade and Economic Analysis (OTEA), has received an application for an amended Export Trade Certificate of Review (''Certificate'') from Northwest Fruit

Exporters. This notice summarizes the proposed amendment and seeks public comments on whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–28A12.''

A summary of the current application follows.

Summary of the Application

Applicant: Northwest Fruit Exporters, 105 South 18th Street, Suite 227, Yakima, WA 98901.

Contact: Fred Scarlett, Manager, (509) 576–8004.

Application No.: 84–28A12.

Date Deemed Submitted: September 20, 2017.

Proposed Amendment: Northwest Fruit Exporters seeks to amend its Certificate as follows:

1. Add a definition of ''export quota'' to clarify that export quotas are those imposed by an authorized government entity in the receiving country. The term does not include a growers association.

2. Add the Affiliate Contractor to the Export Trade Certificate of Review, as the Affiliate Contractor will provide management services by contract to assist Northwest Fruit Exporters in carrying out its activities authorized under the Export Trade Certificate of Review:

3. Add a definition of ''Affiliate Contractor'' to recognize that the Northwest Horticultural Council (''NHC'') will be providing management services by contract to assist NFE in carrying out its activities authorized under the Export Trade Certificate of Review.

4. Add a clarifying amendment restating that meetings at which the NFE Board of Directors may allocate quotas among its members or establish export prices shall not be open to the public or to members of NFE not represented on the NFE Board of Directors. Employees of the Affiliate Contractor are eligible to attend such meetings.

5. Add an amendment that through the management services agreement between NFE and NHC, NHC staff may receive or have access to NFE information that is confidential or proprietary (''Confidential Information''). Employees of NHC will be required to maintain the confidentiality of the Confidential Information as is currently required of NFE employees. Failure to maintain the confidentiality of NFE's Confidential Information shall be cause for termination of employment

6. Change the name of the following existing Member:

- From Columbia Marketing International, LLC to CMI Orchards, LLC

Northwest Fruit Exporter's Export Trade Certificate of Review complete amended membership is listed below:

1. Allan Bros., Naches, WA
2. AltaFresh L.L.C. dba Chelan Fresh Marketing, Chelan, WA
3. Apple House Warehouse & Storage, Inc., Brewster, WA
4. Apple King, L.L.C., Yakima, WA
5. Auvil Fruit Co., Inc., Orondo, WA
6. Baker Produce, Inc., Kennewick, WA
7. Blue Bird, Inc., Peshastin, WA
8. Blue Star Growers, Inc., Cashmere, WA
9. Borton & Sons, Inc., Yakima, WA
10. Brewster Heights Packing & Orchards, LP, Brewster, WA
11. Broetje Orchards LLC, Prescott, WA
12. C.M. Holtzinger Fruit Co., Inc., Yakima, WA
13. CMI Orchards, LLC, Wenatchee, WA
14. Chelan Fruit Cooperative, Chelan, WA
15. Chiawana, Inc. dba Columbia Reach Pack, Yakima, WA
16. Columbia Fruit Packers, Inc., Wenatchee, WA
17. Columbia Fruit Packers/Airport Division, Wenatchee, WA
18. Columbia Valley Fruit, L.L.C., Yakima, WA
19. Congdon Packing Co. L.L.C., Yakima, WA
20. Conrad & Adams Fruit L.L.C., Grandview, WA
21. Cowiche Growers, Inc., Cowiche, WA
22. CPC International Apple Company, Tieton, WA
23. Crane & Crane, Inc., Brewster, WA
24. Custom Apple Packers, Inc., Quincy, and Wenatchee, WA
25. Diamond Fruit Growers, Odell, OR
26. Domex Superfresh Growers LLC, Yakima, WA
27. Douglas Fruit Company, Inc., Pasco, WA
28. Dovex Export Company, Wenatchee, WA
29. Duckwall Fruit, Odell, OR
30. E. Brown & Sons, Inc., Milton-Freewater, OR
31. Evans Fruit Co., Inc., Yakima, WA
32. E.W. Brandt & Sons, Inc., Parker, WA
33. Frosty Packing Co., LLC, Yakima, WA
34. G&G Orchards, Inc., Yakima, WA
35. Gilbert Orchards, Inc., Yakima, WA
36. Gold Digger Apples, Inc., Oroville, WA
37. Hansen Fruit & Cold Storage Co., Inc., Yakima, WA
38. Henggeler Packing Co., Inc., Fruitland, ID
39. Highland Fruit Growers, Inc., Yakima, WA
40. HoneyBear Growers, Inc., Brewster, WA
41. Honey Bear Tree Fruit Co., LLC, Wenatchee, WA
42. Hood River Cherry Company, Hood River, OR
43. Ice Lakes LLC, East Wenatchee, WA
44. JackAss Mt. Ranch, Pasco, WA
45. Jenks Bros Cold Storage & Packing Royal City, WA
46. Kershaw Fruit & Cold Storage, Co., Yakima, WA
47. L&M Companies, Union Gap, WA
48. Larson Fruit Co., Selah, WA
49. Legacy Fruit Packers LLC, Wapato, WA
50. Manson Growers Cooperative, Manson, WA
51. Matson Fruit Company, Selah, WA
52. McDougall & Sons, Inc., Wenatchee, WA
53. Monson Fruit Co. Selah, WA
54. Morgan's of Washington dba Double Diamond Fruit, Quincy, WA
55. Naumes, Inc., Medford, OR
56. Northern Fruit Company, Inc., Wenatchee, WA
57. Olympic Fruit Co., Moxee, WA
58. Oneonta Trading Corp., Wenatchee, WA

59. Orchard View Farms, Inc., The Dalles, OR
60. Pacific Coast Cherry Packers, LLC, Yakima, WA
61. Peshastin Hi-Up Growers, Peshastin, WA
62. Phillippi Fruit Company, Inc., Wenatchee, WA
63. Piepel Premium Fruit Packing LLC, East Wenatchee, WA
64. Polehn Farm's Inc., The Dalles, OR
65. Price Cold Storage & Packing Co., Inc., Yakima, WA
66. Pride Packing Company, Wapato, WA
67. Quincy Fresh Fruit Co., Quincy, WA
68. Rainier Fruit Company, Selah, WA
69. Roche Fruit, Ltd., Yakima, WA
70. Sage Fruit Company, L.L.C., Yakima, WA
71. Smith & Nelson, Inc., Tonasket, WA
72. Stadelman Fruit, L.L.C., Milton-Freewater, OR, and Zillah, WA
73. Stemilt Growers, LLC, Wenatchee, WA
74. Strand Apples, Inc., Cowiche, WA
75. Symms Fruit Ranch, Inc., Caldwell, ID
76. The Dalles Fruit Company, LLC, Dallesport, WA
77. Underwood Fruit & Warehouse Co., Bingen, WA
78. Valicoff Fruit Co., Inc., Wapato, WA
79. Valley Fruit III L.L.C., Wapato, WA
80. Washington Cherry Growers, Peshastin, WA
81. Washington Fruit & Produce Co., Yakima, WA
82. Western Sweet Cherry Group, LLC, Yakima, WA
83. Western Traders LLC, E. Wenatchee, WA
84. Whitby Farms, Inc. dba: Farm Boy Fruit Snacks LLC, Mesa, WA
85. Yakima Fresh, Yakima, WA
86. Yakima Fruit & Cold Storage Co., Yakima, WA
87. Zirkle Fruit Company, Selah, WA

Dated: October 2, 2017.

Joseph E. Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration.

[FR Doc. 2017–21557 Filed 10–5–17; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–977]

High Pressure Steel Cylinders From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation, Notice of Amended Final Determination Pursuant to Court Decision, Notice of Revocation of Antidumping Duty Order in Part, and Discontinuation of Fifth Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 17, 2017, the Court of International Trade (CIT or Court) sustained the Department of Commerce's (Department) remand redetermination pertaining to the final determination in the less than fair value (LTFV) investigation of high pressure steel cylinders from the People's Republic of China (PRC). Because of the CIT's final decision, we are notifying the public that this court decision is not in harmony with the Department's final determination in the LTFV investigation, and we are also amending our final determination, revoking this antidumping duty order, in part, and discontinuing the fifth administrative review.

DATES: Applicable August 27, 2017.

FOR FURTHER INFORMATION CONTACT: Annathea Cook, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0250.

SUPPLEMENTARY INFORMATION:

Background

As noted above, on August 17, 2017, the CIT sustained the Department's Third Remand Redetermination pertaining to the final determination in the less than fair value (LTFV) investigation of high pressure steel cylinders from the People's Republic of China (PRC).[1] In the underlying LTFV investigation, the Department found that, pursuant to section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (Act), ''there was a pattern of prices that differ significantly by time period'' for respondent Beijing Tianhai Industry Co., Ltd. (BTIC), and that ''application of the standard A-to-A {(average-to-average)} methodology would result in the masking of dumping that is unmasked by application of the alternative A-to-T {(average-to-transaction)} methodology when calculating BTIC's weighted-average dumping margin.'' [2] In the *Final Determination,* the Department calculated BTIC's estimated weighted-average dumping margin using the A-to-T comparison method, applied to all of BTIC's export sales.[3] In *Beijing Tianhai I,*[4] the CIT held that the Department's explanation of its ''meaningful difference'' analysis in the *Final Determination* was insufficient to satisfy the explanation requirement under section 777A(d)(1)(B)(ii) of the Act, and also found that ''the explanation ignores the potential use of the {transaction-to-transaction} methodology entirely.'' [5] With respect to BTIC's challenge to the Department's application of the A-to-T methodology to all of BTIC's export sales as being inconsistent with 19 CFR 351.414(f), a regulation BTIC alleged had been inappropriately withdrawn, the CIT also held that ''even if the Department's withdrawal of 19 CFR 351.414(f) (2007) was in violation of the APA's {(Administrative Procedure Act)} notice and comment requirement, that error was harmless as it relates to the plaintiff in this case,'' and also that ''the Department need not adhere to the requirements of 19 CFR 351.414(f) (2007).'' [6] The Court deferred resolution of several other issues pertaining to the Department's targeted dumping analysis and application of the A-to-T comparison method when determining BTIC's estimated weighted-average dumping margin in *Beijing Tianhai I.*[7]

Following the Department's First Remand Redetermination,[8] the CIT in *Beijing Tianhai II* sustained the Department's *Final Determination* as to the other issues that BTIC challenged, for which the CIT had deferred consideration in *Beijing Tianhai I.*[9] However, with regard to the Department's ''meaningful difference'' analysis and the further analysis the Department provided in the First Remand Redetermination on that issue, the CIT held that ''the Department has chosen a narrative rather than an explanation,'' and ''failed to satisfy the requirements of the statute.'' [10] The Court again remanded that issue to the Department.[11]

[1] *See Beijing Tianhai Indus. Co.* v. *United States,* Slip Op. 17–105 (CIT August 17, 2017) (*Beijing Tianhai IV*); *see also* Final Results of Redetermination Pursuant to Court Remand, High Pressure Steel Cylinders from the People's Republic of China, *Beijing Tianhai Indus. Co., Ltd.* v. *United States,* Court No. 12–00203, Slip Op. 17–79 (CIT July 5, 2017), dated August 3, 2017 (Third Remand Redetermination); *High Pressure Steel Cylinders from the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 77 FR 26739 (May 7, 2012) (*Final Determination*), and accompanying Issues and Decision Memorandum; and *High Pressure Steel Cylinders from the People's Republic of China: Antidumping Duty Order,* 77 FR 37377 (June 21, 2012) (*Order*).

[2] *See Final Determination,* and accompanying Issues and Decision Memorandum at 23–24.

[3] *Id.* at 24–26.

[4] *See* Beijing Tianhai Indus. Co. v. United States, 7 F. Supp. 3d 1318 (CIT 2014) (Beijing Tianhai I).

[5] *See Beijing Tianhai I,* 7 F. Supp. 3d at 1331–32.

[6] *Id.* at 1332–37.

[7] *Id.* at 1337.

[8] *See* Final Results of Redetermination Pursuant to Court Remand, High Pressure Steel Cylinders from the People's Republic of China, *Beijing Tianhai Indus. Co., Ltd.* v. *United States,* Court No. 12–00203, Slip Op. 14–104 (CIT September 9, 2014), dated January 7, 2015 (First Remand Redetermination).

[9] *See Beijing Tianhai Indus. Co.* v. *United States,* 106 F. Supp. 3d 1342, 1352–56 (CIT 2015) (*Beijing Tianhai II*)

[10] *Id.* at 1351.

[11] *Id.*

The Department filed its Second Remand Redetermination with the Court on February 8, 2016,[12] in which the Department provided further explanation as to its ''meaningful difference'' analysis under section 777A(d)(1)(B)(ii) of the Act. However, while the Department's Second Remand Redetermination was pending before the CIT, the Court of Appeals for the Federal Circuit (Federal Circuit) held that the Department's 2008 withdrawal of the Limiting Regulation did not comply with the notice-and-comment provision of the Administrative Procedure Act, and that not following this provision could not be excused as harmless error.[13] BTIC subsequently moved in the *Beijing Tianhai* CIT proceeding for the CIT to reconsider its prior holding in *Beijing Tianhai I* on the status of the withdrawn regulation in this case. In *Beijing Tianhai III,* based on *Mid Continent Nail,* the CIT held that the Limiting Regulation (*i.e.,* 19 CFR 351.414(f)(2) (2007)) was in effect at the time the Department issued the final determination in the original investigation.[14] The Limiting Regulation provided, in pertinent part: ''Where the criteria for identifying targeted dumping . . . are satisfied, the {Department} normally will limit the application of the average-to-transaction {(A-to-T)} method to those sales that constitute targeted dumping under {19 CFR 351.414(f)(1)(i)}.'' [15] On remand, the Department was ordered by the CIT to ''reconsider: (1) Its determination that {section 777A(d)(1)(B)(ii) of the Act} may be satisfied by applying a 'meaningful difference' analysis that relies on 100 percent of BTIC's U.S. sales; and (2) should it continue to determine that using the {A-to-T} method is appropriate, the scope of BTIC's U.S. sales to which the {A-to-T} method applies, and revise its dumping margin calculations as may be appropriate.'' [16]

In accordance with the Court's instructions in *Beijing Tianhai III* and in light of the CIT's holding that the Limiting Regulation applied in this investigation, the Department issued the Third Remand Redetermination, which it filed with the CIT on August 4, 2017. In the Third Remand Redetermination, we reconsidered our meaningful difference analysis under section 777A(d)(1)(B)(ii) of the Act, as that analysis was explained in the Second Remand Redetermination.[17] As part of reconsidering our meaningful difference analysis, we recalculated BTIC's A-to-T margin in a manner consistent with the Limiting Regulation by applying the A-to-T comparison methodology only to BTIC's targeted sales (and applying the A-to-A methodology to all other transactions), which resulted in a calculated margin of zero.[18] BTIC's calculated margin using the A-to-A methodology for all transactions was also zero.[19] In applying section 777A(d)(1)(B)(ii) of the Act, we found that there was no meaningful difference in BTIC's antidumping margins using the two aforementioned comparison methodologies.[20] Consequently, in the Third Remand Redetermination, we explained that ''the A-to-A method can account for BTIC's prices which differ significantly'' and ''determined that BTIC's weighted-average dumping margin is now zero.'' [21] The Department also explained that ''as no other aspect of our *Final Determination* is being challenged, we have not made changes to the margins for any other entity.'' [22] The CIT sustained the Third Remand Redetermination in *Beijing Tianhai IV* on August 17, 2017.[23]

Timken Notice

In its decision in *Timken,*[24] as clarified in *Diamond Sawblades,*[25] the Federal Circuit held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's August 17, 2017, final judgment sustaining the Third Remand Redetermination constitutes a final decision of the CIT that is not in harmony with the Department's *Final Determination.* This notice is published in fulfillment of the publication requirements in *Timken.*

Amended Final Determination

Because there is now a final court decision, the Department is amending the *Final Determination* with respect to BTIC:

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Beijing Tianhai Industry Co., Ltd	Beijing Tianhai Industry Co., Ltd	0.00
Beijing Tianhai Industry Co., Ltd	Tianjin Tianhai High Pressure Container Co., Ltd	0.00
Beijing Tianhai Industry Co., Ltd	Langfang Tianhai High Pressure Container Co., Ltd	0.00

Partial Exclusion From Antidumping Duty Order and Discontinuation of Fifth Antidumping Duty Administrative Review

Pursuant to section 735(a)(4) of the Act, the Department ''shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3) of the Act.'' [26] Furthermore, and pursuant to section 735(c)(2) of the Act, ''the investigation shall be terminated upon publication of that negative determination'' and the Department shall ''terminate the suspension of liquidation'' and ''release any bond or other security, and refund any cash deposit.'' [27] As a result of this amended final determination, in which the Department has calculated an estimated weighted-average dumping margin of 0.00 percent for BTIC, the Department is hereby excluding merchandise from the above three

[12] Final Results of Redetermination Pursuant to Court Remand, High Pressure Steel Cylinders from the People's Republic of China, *Beijing Tianhai Indus. Co., Ltd.* v. *United States,* Court No. 12–00203, Slip Op. 15–114 (CIT October 14, 2015), dated February 8, 2016 (Second Remand Redetermination).

[13] *See Mid Continent Nail Corp.* v. *United States,* 846 F.3d 1364 (Fed. Cir. 2017) (*Mid Continent Nail*).

[14] *See* Beijing Tianhai III at 17–18.

[15] *See* Antidumping Duties; Countervailing Duties, 62 FR 27296, 27416 (1997).

[16] *See* Beijing Tianhai III at 17–18.

[17] *See* Third Remand Redetermination at 6 & n. 28.

[18] *Id.* at 6–8.

[19] *Id.* at 7.

[20] *Id.*

[21] *Id.* at 7–8.

[22] *Id.* at 7.

[23] *See* Beijing Tianhai IV at 2.

[24] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[25] *See* Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (Diamond Sawblades).

[26] Section 733(b)(3) of the Act defines *de minimis* dumping margin as ''less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.''

[27] *See* sections 735(c)(2)(A) and (B) of the Act.

producer/exporter chains from the antidumping duty *Order:*[28] Accordingly, the Department will direct U.S. Customs and Border Protection (CBP) to release any bonds or other security and refund cash deposits pertaining to any suspended entries from the three aforementioned producer-exporter combinations. This exclusion does not apply beyond the three producer-exporter combinations referenced above.

We note, however, that pursuant to *Timken* the suspension of liquidation must continue during the pendency of the appeals process. Thus, we will instruct CBP to suspend liquidation of all unliquidated entries from the three aforementioned producer-exporter combinations at a cash deposit rate of 0.00 percent which are entered, or withdrawn from warehouse, for consumption after August 27, 2017, which is ten days after the CIT's final decision, in accordance with section 516A of the Act.[29] If the CIT's ruling is not appealed, or if appealed and upheld, the Department will instruct CBP to terminate the suspension of liquidation and to liquidate entries subject to the three producer-exporter combination rates stated above without regard to antidumping duties. As a result of the exclusion, the Department is discontinuing the ongoing fifth administrative review covering the period June 1, 2016, through May 31, 2017, which only pertains to BTIC's entries during that period of review,[30] and the Department will not initiate any new administrative reviews of BTIC's entries pursuant to the antidumping *Order.*[31]

Lastly, we note that, at this time, the Department remains enjoined by Court order from liquidating entries that were exported by BTIC, and were entered, or withdrawn from warehouse, for consumption during the period December 16, 2011, through May 31, 2016. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

This notice is issued and published in accordance with sections 516A(c)(1) and (e) of the Act.

Dated: September 29, 2017.

Carole Showers,

Executive Director, Office of Policy performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–21582 Filed 10–5–17; 8:45 am]

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[28] *See* Third Remand Redetermination at 8. There continues to be a countervailing duty order covering BTIC's entries. This countervailing duty order is unaffected by this *Timken* notice and notice of amended final determination. *See High Pressure Cylinders from the People's Republic of China: Countervailing Duty Order,* 77 FR 37384 (June 21, 2012).

[29] *See Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony with International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review,* 79 FR 78037, 78038 (December 29, 2014) (Drill Pipe).

[30] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 35749 (August 1, 2017).

[31] *See Drill Pipe,* 79 FR at 78038; *see also Certain Steel Nails from the United Arab Emirates: Notice of Court Decision Not in Harmony with the Final Determination and Amended Final Determination of the Less Than Fair Value Investigation,* 80 FR 77316 (December 14, 2015).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is amending the final results of the countervailing duty administrative review of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (PRC) to correct ministerial errors. The period of review (POR) is January 1, 2014, through December 31, 2014.

DATES: Applicable October 6, 2017.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–3586.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(b)(5), on July 17, 2017, the Department published its final results in the countervailing duty administrative review of solar cells from the PRC.[1] On July 28, 2017, Canadian Solar Manufacturing (Changshu) Inc. and its cross-owned affiliates (collectively, Canadian Solar) timely alleged that the Department made two ministerial errors in the *Final Results.*[2] No other parties submitted ministerial error allegations or comments on Canadian Solar's allegations.

Scope of the Order

The merchandise covered by this order is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials. The merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. While these HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope, which is contained in the Decision Memorandum accompanying the *Final Results,* is dispositive.[3]

Ministerial Errors

Section 751(h) of the Act and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' As discussed in the Department's Ministerial Error Memorandum, the Department finds that the errors alleged by Canadian Solar constitute ministerial errors within the meaning of 19 CFR 351.224(f).[4] Specifically, we made ministerial errors with regard to calculating the benefit Canadian Solar received from the

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014,* 82 FR 32678 (July 17, 2017) (*Final Results*) and accompanying Issues and Decision Memorandum (Decision Memorandum).

[2] *See* Canadian Solar Letter, ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People's Republic of China: Ministerial Error Comments,'' dated July 28, 2017 (Canadian Solar Ministerial Comments).

[3] *See* the Decision Memorandum for a full description of the scope of the order.

[4] *See* Memorandum, ''Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Ministerial Error Comments Regarding the Final Results,'' dated concurrently with and hereby adopted by this notice (Ministerial Error Memorandum).

''Preferential Policy Lending Program,'' and in calculating the inland freight values when constructing Canadian Solar's benchmark for programs regarding the provision of inputs for less than adequate remuneration.[5]

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results*.[6] Specifically, we are amending the net subsidy rates for Canadian Solar and for the 17 companies for which a review was requested that were not selected as mandatory company respondents (*i.e.,* the non-selected companies).[7] The revised net subsidies rates are provided below.

Amended Final Results

As result of correcting the ministerial errors, we determine that that the countervailable subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate (percent *ad valorem*)
Canadian Solar Manufacturing (Changshu) Inc. and its Cross-Owned Affiliates[8]	18.16
Changzhou Trina Solar Energy Co., Ltd. and its Cross-Owned Affiliates[9]	17.14
BYD (Shangluo) Industrial Co., Ltd	17.49
Chint Solar (Zhejiang) Co., Ltd	17.49
ET Solar Energy Limited	17.49
ET Solar Industry Limited	17.49
Hangzhou Sunny Energy Science and Technology Co., Ltd	17.49
Jiawei Solarchina Co., Ltd	17.49
Jiawei Solarchina (Shenzhen) Co., Ltd	17.49
Lightway Green New Energy Co., Ltd	17.49
Luoyang Suntech Power Co., Ltd	17.49
Ningbo Qixin Solar Electrical Appliance Co., Ltd	17.49
Shanghai BYD Co., Ltd	17.49
Shenzhen Topray Solar Co. Ltd	17.49
Systemes Versilis, Inc	17.49
Taizhou BD Trade Co., Ltd	17.49
tenKsolar (Shanghai) Co., Ltd	17.49
Toenergy Technology Hangzhou Co., Ltd	17.49
Wuxi Suntech Power Co., Ltd	17.49

Assessment Rates/Cash Deposits

Normally, the Department would issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these amended final results of review, to liquidate shipments of subject merchandise produced and/or exported by the companies listed above entered, or withdrawn from warehouse, for consumption on or after January 1, 2014, through December 31, 2014. However, on August 3, 8, and 17, 2017, and on September 8, 2017, the U.S. Court of International Trade (CIT) preliminarily enjoined liquidation of certain entries that are subject to the *Final Results.*[10] Accordingly, the Department will not instruct CBP to assess countervailing duties on those enjoined entries pending resolution of the associated litigation.

The Department intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for the companies listed above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after July 17, 2017, which is the date of publication of the *Final Results.* For all non-reviewed firms, we will instruct CBP to collect cash deposits at the most-recent company specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves a reminder to parties that are subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to government business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Disclosure

We intend to disclose the calculations performed for these amended final results to interested parties within five business days of the date of the publication of this notice in accordance with 19 CFR 351.224(b).

We are issuing and publishing these results in accordance with sections 751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: October 3, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–21589 Filed 10–5–17; 8:45 am]

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[5] *See* the Ministerial Error Memorandum for a complete discussion of these alleged errors.

[6] *See Final Results,* 82 FR at 32680.

[7] Consistent with the *Final Results,* for the non-selected companies, we calculated a rate by weight-averaging the calculated subsidy rates of the two mandatory respondents (*i.e.,* Canadian Solar and Changzhou Trina Solar Energy Co., Ltd. and its cross-owned affiliates) using their publicly-ranged sales data for exports of subject merchandise to the United States during the POR.

[8] *See Final Results,* 82 FR at 32680. Cross-owned affiliates are: Canadian Solar Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; CSI Cells Co., Ltd.; CSI Solar Power (China) Inc.; CSI Solartronics (Changshu) Co., Ltd.; CSI Solar Technologies Inc.; and CSI Solar Manufacture Inc.

[9] *Id.* Cross-owned affiliates are: Trina Solar Limited; Trina Solar (Changzhou) Science & Technology Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; and Changzhou Trina PV Ribbon Materials Co., Ltd.

[10] The CIT issued the preliminary injunctions in case numbers 17–00207, 17–00198, 17–00220, and 17–00221, respectively.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–809, A–201–805; A–580–809, A–583–814 and A–583–008]

Certain Circular Welded Non-Alloy Steel Pipe From Brazil, Mexico, the Republic of Korea, and Taiwan and Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Expedited Fourth Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 6, 2017.

SUMMARY: As a result of these sunset reviews, the Department of Commerce (the Department) finds that revocation of the antidumping duty orders on certain circular welded non-alloy steel pipe from Brazil, Mexico, the Republic of Korea, and Taiwan and certain circular welded carbon steel pipes and tubes from Taiwan would be likely to lead to continuation or recurrence of dumping. The magnitude of the dumping margins likely to prevail are indicated in the ''Final Results of Sunset Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and

Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1984, the Department published the *AD Order* on certain circular welded carbon steel pipes and tubes from Taiwan.[1] On November 2, 1992, the Department published the *AD Orders* on imports of certain circular welded non-alloy steel pipe from Brazil, the Republic of Korea (Korea), Mexico, and Taiwan, and an amendment to the final determination of sales at less than fair value for certain circular welded non-alloy steel pipe from Korea.[2] On July 17, 2012, the Department published the notice of continuation of these *AD Orders*.[3]

On June 2, 2017, the Department published the notice of initiation of the sunset reviews of the *AD Orders* on circular welded non-alloy steel pipe from Brazil, Mexico, Korea, and certain circular welded carbon steel pipes and tubes from Taiwan.[4] The *AD Order* on certain circular welded non-alloy steel pipe from Taiwan was inadvertently not included in the initiation notice. On June 16, 2017, the Department published a correction notice.[5]

On June 30, 2017, the Department received complete substantive responses to the notices of initiation from domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department received no substantive responses from respondent interested parties. As a result, the Department conducted an expedited, *i.e.,* 120-day, sunset review of these *AD Orders* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Orders

Certain Circular Welded Non-Alloy Steel Pipe From Brazil

The products covered by these orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in these orders. The Issues and Decision Memorandum, which is hereby adopted by this notice, provides a full description of the scope of the order.[6]

Certain Circular Welded Non-Alloy Steel Pipe From Mexico

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this order.

Certain Circular Welded Non-Alloy Steel Pipe From Korea

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order. All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's Final Negative Determination of Scope Inquiry on

[1] *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Antidumping Order,* 49 FR 19369 (May 7, 1984).

[2] *See Notice of Antidumping Duty Orders: Certain Circular Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992) (*Orders for Brazil, Korea, Mexico, and Venezuela and Amended Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea*).

[3] *See Certain Circular Welded Carbon Steel Pipes and Tubes from India, Thailand, and Turkey; Certain Circular Welded Non-Alloy Steel Pipe from Brazil, Mexico, the Republic of Korea, and Taiwan, and Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Continuation of Antidumping and Countervailing Duty Orders,* 77 FR 41967 (July 17, 2012) (*Third Continuation of the AD and CVD Orders*).

[4] *See Initiation of Five-Year (''Sunset'') Reviews,* 82 FR 25599 (June 2, 2017).

[5] *See Initiation of Five-Year (''Sunset'') Review; Correction,* 82 FR 27690 (June 16, 2017).

[6] *See* Department Memorandum, ''Issues and Decision Memorandum: Final Results of Expedited Fourth Sunset Reviews of the Antidumping Duty Orders on Certain Circular Welded Non-Alloy Steel Pipe from Brazil, Mexico, the Republic of Korea, and Taiwan and Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan,'' dated concurrently with this **Federal Register** notice (Issues and Decision Memorandum).

Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela (61 FR 11608, March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Certain Circular Welded Non-Alloy Steel Pipe From Taiwan

The products covered by this order are (1) circular welded non-alloy steel pipes and tubes, of circular cross section over 114.3 millimeters (4.5 inches), but not over 406.4 millimeters (16 inches) in outside diameter, with a wall thickness of 1.65 millimeters (0.065 inches) or more, regardless of surface finish (black, galvanized, or painted), or end-finish (plain end, beveled end, threaded, or threaded and coupled); and (2) circular welded non-alloy steel pipes and tubes, of circular cross-section less than 406.4 millimeters (16 inches), with a wall thickness of less than 1.65 millimeters (0.065 inches), regardless of surface finish (black, galvanized, or painted) or end-finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkling systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence-tubing and as structural pipe tubing used for framing and support members for construction, or load-bearing purposes in the construction, shipbuilding, trucking, farm-equipment, and related industries. Unfinished conduit pipe is also included in this order.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind or used for oil and gas pipelines is also not included in this investigation.

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan

The merchandise covered by this order is certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: Welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter. The Issues and Decision Memorandum provides a full description of the scope of the order.

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping in the event of revocation, and the magnitude of dumping margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Issues and Decision Memorandum, which 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 in Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/enforcement/*. The signed and electronic versions of the Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty orders on certain circular welded non-alloy steel pipe from Brazil, Mexico, Korea, and Taiwan would be likely to lead to continuation or recurrence of dumping. We determine that the weighted-average dumping margins likely to prevail are up to the following percentages:

Country	Weighted-average margin (percent)
Brazil	103.38
Mexico	7.32
Korea	1.20
Taiwan	27.65

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan would be likely to lead to continuation or recurrence of dumping. We determine that the weighted average dumping margin likely to prevail is up to the following percentage:

Country	Weighted-average margin (percent)
Taiwan	8.91

Notification to Interested Parties

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: October 2, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Performing the Non-exclusive Functions and Duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–21581 Filed 10–5–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828, A–557–809, A–565–801]

Certain Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines: Final Results of the Expedited Sunset Review of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 6, 2017.

SUMMARY: As a result of this sunset review, the Department of Commerce (the Department) finds that revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings (butt-weld fittings) from Italy, Malaysia, and the Philippines would be likely to lead to continuation or recurrence of dumping at the rates identified in the ''Final Results of Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Madeline Heeren, AD/CVD Operations, Office VI, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–9179.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty orders on butt-weld fittings from Italy, Malaysia, and the Philippines on February 23, 2001.[1] On June 2, 2017, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the Department initiated sunset reviews of the antidumping duty orders on butt-weld fittings from Italy, Malaysia, and the Philippines.[2] On June 16, 2017, the Department received a notice of intent to participate from Core Pipe Products, Inc.; Shaw Alloy Piping Products, Inc.; and Taylor Forge Stainless, Inc. (collectively, the Domestic Interested Parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). The Domestic Interested Parties are manufacturers of a domestic like product in the United States and, accordingly, are domestic interested parties pursuant to section 771(9)(C) of the Act.

On June 30, 2017, the Department received an adequate substantive response to the notice of initiation from Domestic Interested Parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive any timely filed responses from the respondent interested parties, *i.e.,* butt-weld fitting producers and exporters from Italy, Malaysia, and the Philippines. On the basis of the notices of intent to participate and adequate substantive responses filed by the Domestic Interested Parties, and the inadequate response from any respondent interested party, the Department conducted an expedited (120-day) sunset review of the order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Orders

The product covered by the Orders is butt-weld fittings from Italy, Malaysia, and the Philippines.[3]

Analysis of Comments Received

The issues discussed in the Decision Memorandum are: (1) The likelihood of continuation or recurrence of dumping, and (2) the magnitude of the margins of dumping likely to prevail if these orders were revoked.[4] Parties can find a complete discussion of all issues raised in this review, and the corresponding recommendations, in the Decision Memorandum, which 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 in room B8024 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/enforcement/*. The signed Decision Memorandum and electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, the Department determines that revocation of the antidumping duty orders of butt-weld pipe fittings from Italy, Malaysia, and the Philippines would likely to lead to a continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be 26.59 percent for Italy, 7.51 percent for Malaysia, and up to 33.81 percent for the Philippines.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return of destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: October 2, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–21590 Filed 10–5–17; 8:45 am]

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[1] *See Antidumping Duty Orders: Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines,* 66 FR 11257 (February 23, 2001) (*LTFV Orders*).

[2] *See Initiation of Five-Year* (*Sunset*) *Reviews,* 82 FR 25599 (June 2, 2017) (*Sunset Initiation*).

[3] For a full description of the scope of the orders, *See* Memorandum, ''Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Orders on Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines,'' dated concurrently with this notice (Decision Memorandum).

[4] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain lined paper products (CLPP) from India, covering the period September 1, 2015, through August 31, 2016. This review covers two mandatory respondents, Navneet Education Ltd. (Navneet) and SAB International (SAB) and five non-selected companies. We preliminarily find that Navneet and SAB did not sell subject merchandise at less than normal value (NV) during the period of review (POR). Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 6, 2017.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Sam Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3797 or (202) 482–7851, respectively.

Background

On November 9, 2016, the Department published a notice of initiation of an administrative review of the antidumping order on lined paper from India.[1] The Department initiated this administrative review covering the following nine companies: Kokuyo Riddhi Paper Products Pvt. Ltd. (Kokuyo Riddhi), Lodha Offset Limited (Lodha), Magic International Pvt. Ltd. (Magic), Marisa International (Marisa),

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 78778 (November 9, 2016) (*Initiation Notice*).

Navneet, Pioneer Stationery Pvt Ltd. (Pioneer), SAB, SGM Paper Products, and Super Impex.

On May 15, 2017, the Department extended the deadline for the preliminary results to October 2, 2017.[2] From July 19, 2017, through July 28, 2017, the Department conducted cost and sales verifications of SAB.[3]

Scope of the Order

The merchandise covered by the *CLPP Order*[4] is certain lined paper products. The merchandise subject to this order is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.[5]

Preliminary Determination of No Shipments

Lodha and Marisa reported that they made no shipments of subject merchandise to the United States during the POR. To confirm Lodha's and Marisa's no shipment claims, the Department issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP) requesting that it review Lodha's and Marisa's no-shipment claims.[6] CBP did not report that it had any information to contradict Lodha's and Marisa's claims of no shipments during the POR.

Given that Lodha and Marisa certified that they made no shipments of subject merchandise to the United States during the POR, and there is no information calling their claims into question, we preliminarily determine that Lodha and Marisa did not have any reviewable transactions during the POR. Consistent with the Department's practice, we will not rescind the review with respect to Lodha and Marisa but, rather, will complete the review and issue instructions to CBP based on the final results.[7]

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price or export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary results, *see* the Preliminary Decision Memorandum. 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 *https://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 on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Calculation of Normal Value Based on Constructed Value (CV)

SAB reported that it made no sales in the home market during the POR.[8] Pursuant to 773(a)(1)(C)(i) of the Act, we examined SAB's third country sales and have determined that such sales do not constitute a viable comparison market (CM) within the meaning of section 773(a)(1)(B)(ii)(II) of the Act.[9] Therefore, for these preliminary results, we relied on CV as the basis for calculating NV, in accordance with sections 773(a)(4) and (e) of the Act.[10]

Preliminary Results of the Review

As a result of this review, we preliminarily calculated a dumping margin of zero percent for both Navneet and SAB. We are applying to the non-selected companies the rates calculated for the mandatory respondents in these preliminary results, as referenced below.[11]

Producer/exporter	Weighted-average dumping margin (percent)
Navneet Education Ltd	0.00
SAB International	0.00
Kokuyo Riddhi Paper Products Pvt. Ltd	0.00
Magic International Pvt. Ltd	0.00
Pioneer Stationery Pvt Ltd	0.00
SGM Paper Products	0.00
Super Impex	0.00

Assessment Rate

Upon issuance of the final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If the weighted-average dumping margin for Navneet or SAB is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[12] We will instruct CBP to

[2] *See* Memorandum, ''Certain Lined Paper Products from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review; 2015–2016,'' dated May 15, 2017.

[3] *See* Memorandum, ''2015–2016 Antidumping Duty Administrative Review of Certain Lined Paper Products from India: Verification of Sales Questionnaire Responses of SAB International'' dated September 29, 2017 (SAB Sales Verification Report); *see also* Memorandum, ''2015–2016 Antidumping Administrative Review of Certain Lined Paper Products from India: Verification of Cost Questionnaire Responses of SAB International'' dated September 29, 2017 (SAB Cost Verification Report).

[4] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*CLPP Order).*

[5] For a complete description of the Scope of the Order, *see* Memorandum titled, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Lined Paper Products from India; 2015–2016,'' dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[6] *See* No Shipments Inquiry for certain lined paper products from India Produced and/or Exported by Lodha Offset and Marisa International (A–533–843), message number 6365302 (December 30, 2016).

[7] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR, at 51306–51307 (August 28, 2014).

[8] *See* SAB's February 14, 2017 Section A Questionnaire Response (SAB February 14, 2017 AQR), at 3–4 and Exhibit A–1.

[9] *Id.*

[10] *See* Preliminary Decision Memorandum, at 18–22.

[11] *See Albemarle Corp. & Subsidiaries* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016) (Albemarle).

[12] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.5 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

In accordance with the Department's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by each respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for respondents noted above will be the rates established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.91 percent, the all-others rate established in the investigation as modified by the section 129 determination.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[14] Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[15] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[16] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[17] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[18] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, within 120 days after issuance of these preliminary results.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: October 2, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2017–21588 Filed 10–5–17; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007).

[14] *See* 19 CFR 351.224(b).

[15] *See* 19 CFR 351.309(d).

[16] *See* 19 CFR 351.309(c)(2) and (d)(2).

[17] *See* 19 CFR 351.310(c).

[18] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–817]

Oil Country Tubular Goods From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on Oil Country Tubular Goods (OCTG) from the Republic of Turkey (Turkey). The period of review (POR) is January 1, 2015, through December 31, 2015. The Department initiated this administrative review with respect to the following producers/exporters of subject merchandise: Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret (collectively, Borusan); and Tosçelik Profil ve Sac Endustrisi A.Ş. and Tosyali Diş Ticaret A. Ş. (collectively, Toscelik). We preliminarily find that Borusan received countervailable subsidies at *de minimis* levels during the POR. Additionally, as a result of the final and conclusive decision by the Court of Appeals for the Federal Circuit related to the underlying CVD investigation of OCTG from Turkey, which resulted in Toscelik being excluded from the CVD order, we are rescinding the administrative review with respect to Toscelik. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 6, 2017.

FOR FURTHER INFORMATION CONTACT: Jennifer Shore or Aimee Phelan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2778 or (202) 482–0697, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2016, the Department published a notice of opportunity to request an administrative review of the CVD order on OCTG from Turkey for the period January 1, 2015, through December 31, 2015.[1] On September 30, 2016, the Department received review requests from Borusan and Toscelik.[2] On November 9, 2016, the Department published a notice of initiation of administrative review for this CVD order.[3] On May 17, 2017, the Department postponed the deadline for issuing the preliminary results of this administrative review until October 2, 2017.[4] On September 27, 2017, the Department amended the CVD order on OCTG from Turkey to exclude Toscelik.[5]

Scope of the Order

The merchandise covered by the order is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. A full description of the scope of the Order is contained in the Preliminary Decision Memorandum, which is hereby adopted by this notice.[6]

Methodology

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily find 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.[7] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. 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 *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of topics discussed in the Preliminary Decision Memorandum is provided in the Appendix to this notice.

Partial Rescission of Administrative Review

As stated above, the Department initiated an administrative review of Toscelik for the period January 1, 2015 through December 31, 2015.[8] However, subsequent to the final and conclusive decision by the Court of Appeals for the Federal Circuit related to the underlying CVD investigation of OCTG from Turkey,[9] Toscelik was excluded from the CVD order. On September 27, 2017, the Department amended the CVD order on OCTG from Turkey to exclude Toscelik.[10] Accordingly, we are rescinding this administrative review with respect to Toscelik.

Preliminary Results of the Review

We preliminarily find that the following net countervailable subsidy rate for the mandatory respondent, Borusan, for the period January 1, 2015 through December 31, 2015:

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 81 FR 62096 (September 8, 2016).

[2] *See* Letter from Borusan, ''Oil Country Tubular Goods from the Turkey, Case No. C–489–817: Request for Countervailing Duty Administrative Review,'' dated September 30, 2016; and Letter from Toscelik, ''OCTG from Turkey; Tosçelik request for administrative review,'' dated September 30, 2016.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 78778 (November 9, 2016).

[4] *See* Department Memorandum, Extension of Deadline of Preliminary Results, dated May 17, 2017.

[5] *See Oil Country Tubular Goods from the Republic of Turkey: Amendment of Countervailing Duty Order,* signed on September 27, 2017 (*OCTG Amended Order*).

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of 2015 Countervailing Duty Administrative Review and Partial Rescission: Oil Country Tubular Goods from the Republic of Turkey,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[7] *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.

[8] The Department determined that Toscelik Profil ve Sac Endustrisi A.S. and Tosyali Dis Ticaret A.S. are cross-owned. *See OCTG Amended Order.*

[9] *See Maverick Tube Corporation* v. *United States,* 857 F.3d 1353 (Fed. Cir. 2017).

[10] *See OCTG Amended Order.*

[11] The Department has determined that Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret are cross-owned. *See* Preliminary Decision Memorandum.

Company	Subsidy rate *ad valorem* (percent)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S., and Borusan Istikbal Ticaret [11]	*0.48

* *De Minimis.*

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

As a result of Toscelik's exclusion from the CVD order on OCTG from Turkey, the Department will instruct CBP to terminate the suspension of liquidation of entries of subject merchandise where Toscelik acted as both the producer and exporter during the period January 1, 2015, through December 31, 2015, and to liquidate, without regard to countervailing duties, all entries of OCTG produced and exported by Toscelik currently suspended. Entries of subject merchandise exported to the United States by any other producer and exporter combination involving Toscelik are not entitled to this exclusion from suspension of liquidation and are subject to the cash deposit rate for the ''all others'' entity. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice in the **Federal Register**.

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, the Department intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for Borusan, should the final results of this administrative review remain the same as these preliminary results; if the rate is zero or *de minimis,* then zero cash deposit will be required. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most recent company specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to parties in this review the calculations performed in reaching the preliminary results within five days of publication of these preliminary results.[12] Interested parties may submit written comments (case briefs) on the preliminary results no later than 30 days from the date of publication of this **Federal Register** notice, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[13] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[15] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues addressed at the hearing will be limited to those raised in the briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[16] The Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), unless this deadline is extended.

These preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 2, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2017–21585 Filed 10–5–17; 8:45 am]

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[12] *See* 19 CFR 351.224(b).

[13] *See* 19 CFR 351.309(c)(1)(ii); 351.309(d)(1); and 19 CFR 351.303 (for general filing requirements).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.310(c).

[16] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Expedited Fourth Sunset Review of Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 1, 2017, the Department of Commerce (the Department) initiated a sunset review of the countervailing duty (CVD) order on circular welded carbon steel pipes and tubes (steel pipes and tubes) from Turkey pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted an expedited sunset review of this order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Effective October 6, 2017.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–8362.

SUPPLEMENTAL INFORMATION

Background

The CVD order on steel pipes and tubes from Turkey was published in the **Federal Register** on March 7, 1986.[1] On June 2, 2017, the Department initiated the fourth sunset review of this CVD order pursuant to section 751(c) of the Act.[2] On June 15, 2017, we received a notice of intent to participate on behalf of the following domestic interested

[1] *See Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey,* 51 FR 7984 (March 7, 1986).

[2] *See* Initiation of Five-Year Sunset Reviews, 82 FR 25599 (June 2, 2017)*; see also Initiation of Five-Year (Sunset) Review; Correction,* 82 FR 27690 (June 16, 2017).

parties: Bull Moose, Exltube, TMK IPSCO, and Zekelman Industries (hereinafter referred to as the domestic interested parties).[3] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers in the United States of a domestic like product.[4] On June 30, 2017, the domestic interested parties submitted their substantive response.[5] On July 3, 2017, the Government of Turkey (GOT) submitted its substantive response in which it expressed its intent to participate in this review as the government of the country in which subject merchandise is produced and exported.[6] On July 10, 2017, the domestic interested parties submitted rebuttal comments to the GOT Substantive Response.[7]

The Department did not receive any substantive responses from Turkish producers or exporters of the merchandise covered by this order. A government's response alone, normally, is not sufficient for the Department to conduct a full sunset review, unless the investigation was conducted on an aggregate basis.[8] Because this investigation was conducted on a company-specific, rather than an aggregate, basis,[9] we determined that no company respondent interested party submitted a substantive response, and thus, conducted an expedited (120-day) sunset review of this order.[10]

Scope of the Order

The products covered by the order are certain welded carbon steel pipes and tubes with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipes and tubes) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum, which is dated concurrently with and adopted by this notice.[11] The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the *Order* were revoked. Parties can find a complete discussion of all issues raised in this expedited sunset review and the corresponding recommendations in this public memorandum, which is on file electronically *via* the Enforcement and Compliance Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

As a result of this review, the Department determines that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Producer/exporter	Net countervailable subsidy rate (percent)
Bant Boru Sanayi ve Ticaret A.S. (Bant Boru)	3.63
Borusan Group[12]	1.41
Erbosan[13]	3.63
Yucel Boru Group[14]	1.57
All Others	3.63

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing the final results of this review in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: October 2, 2017.

Gary Taverman,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–21587 Filed 10–5–17; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF629

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting; Correction

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

[3] *See* Letter from Domestic Interested Party, ''Fourth Five-Year (''Sunset'') Review of Countervailing Duty Order on Circular Welded Carbon Steel Pipes and Tubes from Turkey: Domestic Industry Notice of Intent to Participate in Sunset Review,'' dated June 15, 2017.

[4] *Id.*

[5] *See* Letter from Domestic Interested Parties, ''Fourth Five Year (''Sunset'') Review of Countervailing Duty Order on Certain Circular Welded Carbon Steel Pipes and Tubes from Turkey: Domestic Industry's Substantive Response,'' (Domestic Interested Parties Substantive Response), dated June 30, 2017.

[6] *See* Letter from GOT, ''Response of the Government of Turkey in the Countervailing Duty 4th Sunset Review Involving Certain Welded Carbon Steel Pipe and Tube from Turkey,'' (GOT Substantive Response), dated July 3, 2017.

[7] *See* letter from the Domestic Interested Parties, ''Five-Year (''Sunset'') Review of Countervailing Duty Order on Certain Circulate Welded Carbon Steel Pipes and Tubes from Turkey: Domestic Industry's Rebuttal to the Government of Turkey's Substantive Response,'' dated July 10, 2017 (Domestic Parties Rebuttal Submission).

[8] *See, e.g., Certain Pasta from Turkey: Final Results of Expedited Five-Year (''Sunset'') Review of the Countervailing Duty Order,* 72 FR 5269 (February 5, 2007), *and Certain Carbon Steel Products from Sweden: Final Results of Expedited Sunset Review of Countervailing Duty Order,* 65 FR 18304 (April 7, 2000).

[9] *See Final Affirmative Countervailing Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products From Turkey,* 51 FR 1268 (January 10, 1986).

[10] *See* section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

[11] *See* Memorandum regarding: ''Issues and Decision Memorandum for the Final Results of Expedited Fourth Sunset Review of the Countervailing Duty Order on Circular Welded Carbon Steel Pipes and Tubes from Turkey,'' dated concurrently with this notice.

[12] The Borusan Group includes the following entities: Borusan Group, Borusan Holding, A.S., Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret, A.S., and Borusan Lojistik Dagitim Pepolama Tasimacilik ve Tic A.S.

[13] Erbosan includes Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan AS) and Erbosan Erciyas Pipe Industry and Trade Co. Kayseri Free Zone Branch (Erbosan FZB).

[14] The Yucel Boru Group includes Yucel Boru ye Profil Endustrisi A.S, Yucelboru lhracat Ithalat ye Pazarlama A.S, and Cayirova Born Sanayi ye Ticaret A.S.

ACTION: Notice of rescheduled SEDAR 52 assessment scoping webinar for Gulf of Mexico red snapper.

SUMMARY: The SEDAR 52 assessment process of Gulf of Mexico red snapper will consist of an In-person Workshop, and a series of assessment webinars.

DATES: The SEDAR 52 assessment scoping webinar will be held October 26, 2017, from 1 p.m. to 3 p.m. Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net*

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on August 29, 2017 (82 FR 40995). The notice announces the rescheduled date of the meeting from September 21, 2017 to October 26, 2017.

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the assessment scoping webinar are as follows:

Panelists will review the data sets being considered for the assessment and discuss initial modeling efforts.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 3, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–21598 Filed 10–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NMFS Alaska Region Vessel Monitoring System (VMS) Program.

OMB Control Number: 0648–0445.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 1,139.

Average Hours per Response: 12 minutes for VMS check-in report; 2 hours for VMS operation (includes installation and maintenance).

Burden Hours: 5,101.

Needs and Uses: This request is for extension of a currently approved information collection.

Vessel Monitoring System (VMS) units integrate global positioning system (GPS) and communications electronics into a single, tamper-resistant package to automatically determine the vessel's position several times per hour. The units can be set to transmit a vessel's location periodically and automatically to an overhead satellite in real time. In most cases, the vessel owner is unaware of exactly when the unit is transmitting and is unable to alter the signal or the time of transmission. The VMS unit is passive and automatic, requiring no reporting effort by the vessel operator. A communications service provider receives the transmission and relays it to the National Marine Fisheries Service (NMFS) Office of Law Enforcement and the U.S. Coast Guard. Enforcement of management measures, such as directed fishing closures and critical habitat no-fishing zones, relies heavily on the use of VMS.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: October 3, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–21580 Filed 10–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Islands Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 5, 2017.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *pracomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 725–5175, or *Walter.Ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a currently approved information collection.

Regulations at 50 CFR 665, Subpart F, require that a vessel must be registered to a valid federal fishing permit to fish with longline gear for Pacific pelagic management unit species (PMUS), land or transship longline caught PMUS, or receive longline caught PMUS from a longline vessel, within the Exclusive Economic Zone (EEZ) of United States (U.S.) islands in the central and western Pacific, to fish with pelagic squid jig gear for PMUS within the Exclusive Economic Zone (EEZ) of United States (U.S.) islands in the central and western Pacific, or to fish with troll and handline gear for PMUS within the EEZ around each of the Pacific Remote Island Areas (PRIA), in areas not prohibited to fishing.

Regulations at 50 CFR parts 665, Subparts D and E, require that the owner of a vessel used to fish for, land, or transship bottomfish management unit species (BMUS) using a large vessel (50 ft or longer) around Guam, fish commercially for BMUS in the EEZ around the Northern Mariana Islands, or use a vessel to fish for BMUS within the EEZ around each of the PRIA, in areas not prohibited to fishing, must register it to a valid federal fishing permit.

Regulations at 50 CFR 665, Subparts B, C, D, and E, require that a vessel used to fish for precious corals within the EEZ of U.S. islands in the central and western Pacific, must be registered to a valid federal fishing permit for a specific precious coral permit area.

The collection is revised by merging currently approved information collections OMB Control Numbers 0648–0584, Northern Mariana Islands Commercial Bottomfish Fishery Permit, 0648–0586, Pacific Islands Crustacean Permit, and 0648–0589, Pacific Islands Pelagic Squid Jig Fishing Permit, into OMB Control No. 0648–0490 Pacific Islands Region Permit Family of Forms. NMFS approved new two-tier processing fees for most permits, resulting in revised cost estimates.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, or online applications when implemented, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0490.

Form Number: None.

Type of Review: Regular submission (revision of a currently approved collection).

Affected Public: Business or other for-profit organizations, individuals, or households.

Estimated Number of Respondents: 354.

Estimated Time per Response: Hawaii longline limited entry permits: Renewal on paper application—30 minutes; renewal online—15 minutes; transfer—1 hour, closed area exemption and permit appeals—2 hours; American Samoa longline limited entry permits: Renewal and additional permit application—45 minutes, transfer—1 hour 15 minutes, permit appeals—2 hours; all other permits: Paper—30 minutes, online—15 minutes.

Estimated Total Annual Burden Hours: 169.

Estimated Total Annual Cost to Public: $14,000 in application processing fees and recordkeeping/mailing costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 3, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–21579 Filed 10–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF704

Western Pacific Fishery Management Council; Public Meetings; Correction

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

ACTION: Notice of time change of a public hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 171st Council meeting to take actions on fishery management issues in the Western Pacific Region.

DATES: The Council meeting will be held on October 17 to October 19, 2017.

ADDRESSES: The 171st Council meeting will be held at Governor H. Rex Lee Auditorium (Fale Laumei), Utulei, American Samoa, phone: (684) 633–5155.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on September 22, 2017 (82 FR 44382). The Public Hearing on American Samoa Fisheries originally scheduled on Tuesday, October 17, 2017, from 6 p.m. to 8 p.m. has changed

to Tuesday, October 17, 2017, from 7:30 p.m. to 9 p.m.

The 171st Council Meeting will be held on October 17, 2017 between 1 p.m. and 5 p.m. with a Public Hearing between 7:30 p.m. and 9 p.m.; on October 18, 2017 between 8:30 a.m. and 5 p.m. with a Fishers Forum between 6 p.m. and 9 p.m.; and on October 19, 2017 between 8:30 p.m. and 3 p.m.

Agenda items noted as ''Final Action Items'' refer to actions that result in Council transmittal of a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. An opportunity to submit public comment will be provided throughout the agendas. The order in which agenda items are addressed may change and will be announced in advance at the Council meeting. The meetings will run as late as necessary to complete scheduled business. Background documents will be available from, and written comments should be sent to, Kitty M. Simonds, Executive Director; Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220 or fax: (808) 522–8226.

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 171st meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: October 3, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–21597 Filed 10–5–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Notice; correction.

SUMMARY: The notice of an open meeting scheduled for October 20, 2017 published in the **Federal Register** on September 27, 2017 (82 FR 44995) has a new start time. The time has changed to 09:30 a.m.–12:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mrs. Deadra K. Ghostlaw, the Designated Federal Officer for the committee, in writing at: Secretary of the General Staff, ATTN: Deadra K. Ghostlaw, 646 Swift Road, West Point, NY 10996; by email at: *deadra.ghostlaw@usma.edu* or *BoV@usma.edu;* or by telephone at (845) 938–4200.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2017–21573 Filed 10–5–17; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors. This meeting is open to the public.

DATES: The WHINSEC Board of Visitors will meet from 8:00 a.m. to 4:00 p.m. on Thursday, November 2, 2017.

ADDRESSES: Western Hemisphere Institute for Security Cooperation, Bradley Hall, 7301 Baltzell Avenue, Building 396, Fort Benning, GA 31905.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Procell, Acting Executive Secretary for the Committee, in writing at USACGSC, 100 Stimson Avenue, Fort Leavenworth, KS 66027–2301, by email at *richard.d.procell2.civ@mail.mil,* or by telephone at (913) 684–2963.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), 41 CFR 102–3.140(c), and 41 CFR 102–3.150.

Purpose of the Meeting: The Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors (BoV) is a non-discretionary Federal Advisory Committee chartered to provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on matters pertaining to the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Institute; other matters relating to the Institute that the Board decides to consider; and other items that the Secretary of Defense determines appropriate. The Board reviews curriculum to determine whether it adheres to current U.S. doctrine, complies with applicable U.S. laws and regulations, and is consistent with U.S. policy goals toward Latin America and the Caribbean. The Board also determines whether the instruction under the curriculum of the Institute appropriately emphasizes human rights, the rule of law, due process, civilian control of the military, and the role of the military in a democratic society. The Secretary of Defense may act on the Committee's advice and recommendations.

Agenda: Status briefing on the Institute from the Commandant; update briefings from the Office of the Under Secretary of Defense (Policy); Department of State; U.S. Northern Command; and U.S. Southern Command; presentation of other information appropriate to the Board's interests, and a public comments period.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Because the meeting of the committee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. Bradley Hall is fully

handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Mr. Procell at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received at least seven business days prior to the meeting to be considered by the Committee. The Designated Federal Officer will review all timely submitted written comments or statements with the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Requests will be logged in the order received. The Designated Federal Officer in consultation with the Committee Chair will determine whether the subject matter of each comment is relevant to the Committee's mission and/or the topics to be addressed in this public meeting. A 30-minute period between 10:30 to 11:00 a.m. will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2017–21572 Filed 10–5–17; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Final Environmental Impact Statement for the Disposal and Reuse of the Former Naval Weapons Station Seal Beach, Detachment Concord, Concord, California

AGENCY: Department of the Navy, DoD

ACTION: Notice.

SUMMARY: The U.S. Department of the Navy (Navy), after carefully weighing the environmental consequences of the proposed action, announces its decision to implement Alternative 1, the Navy's preferred alternative, as described in the Final Environmental Impact Statement (EIS) for the Disposal and Reuse of the Former Naval Weapons Station Seal Beach, Detachment Concord (NWS Concord), Concord, California. This decision will make approximately 4,972 acres of former NWS Concord property available to the local community for economic redevelopment.

SUPPLEMENTARY INFORMATION: Disposal and reuse under the chosen alternative is consistent with the City of Concord's ''Concord Reuse Project Area Plan'' and Public Law 101–510, the Defense Base Closure and Realignment Act (BRAC) of 1990, as amended in 2005. The complete text of the Record of Decision (ROD) is available for public viewing on the project Web site at *http://www.BRACPMO.Navy.mil* along with the Final EIS and supporting documents. Single copies of the ROD will be made available upon request by contacting: Ms. Erica Spinelli, Navy BRAC Program Management Office West, Concord EIS, 33000 Nixie Way, Building 50, San Diego, California, 92147–0001, telephone 619–524–5096, email *erica.spinelli@navy.mil.*

Dated: October 2, 2017.

A.M. Nichols,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2017–21601 Filed 10–5–17; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act of 1965, as Amended

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2014 under the waiver authority in the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), including waivers related to flexibilities granted to States in exchange for State-led reforms (ESEA flexibility).

The ESEA requires that the Department publish in the **Federal Register**, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during each calendar year.

FOR FURTHER INFORMATION CONTACT: Kia Weems, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W341, Washington, DC 20202. Telephone: (202) 260–2221 or by email: *Kia.Weems@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In 2014, the Department granted waivers through an initiative known as ESEA flexibility to 39 States under the waiver authority in section 9401 of the ESEA, in exchange for rigorous and comprehensive State-developed plans designed to improve student academic

achievement and increase the quality of instruction. We granted:

(a) The following 10 waivers to 39 SEAs under ESEA flexibility:

1. Flexibility Regarding the 2014 Timeline for Determining Adequate Yearly Progress (AYP);

2. Flexibility in Implementation of School Improvement Requirements;

3. Flexibility in Implementation of Local Educational Agency (LEA) Improvement Requirements;

4. Flexibility for Rural LEAs;

5. Flexibility for Schoolwide Programs;

6. Flexibility to Support School Improvement;

7. Flexibility for Reward Schools;

8. Flexibility Regarding Highly Qualified Teacher (HQT) Improvement Plans;

9. Flexibility to Transfer Certain Funds; and

10. Flexibility to Use School Improvement Grant (SIG) funds to Support Priority Schools.

In addition to waiving the 10 provisions listed above, the Department granted three optional waivers under ESEA flexibility related to the following:

1. Waivers of the 21st Century Community Learning Centers (21st CCLC) requirement to provide services during non-school hours or when school is not in session;

2. Waivers of the requirement to make AYP determinations; and

3. Waivers of requirements pertaining to Title I, Part A within-district allocations.

(b) *67 waivers extending the period in which funds were available for obligation:* Three waivers extending the period of availability of fiscal year (FY) 2009 SIG funds under the regular appropriation and the American Recovery and Reinvestment Act of 2009 (ARRA); 62 waivers extending the period of availability of FY 2010, 2011, 2012, or 2013 SIG funds; one waiver related to consolidated grant funds for Insular Areas; and one waiver extending the period for the Mathematics and Science Partnerships program funds;

(c) Eight waivers pertaining to SIG school eligibility requirements and the definition of ''persistently lowest-achieving schools'';

(d) Six waivers allowing SEAs to approve schools or LEAs identified as ''in need of improvement'' to become supplemental educational services (SES) providers;

(e) *39 waivers of requirements related to State academic standards or assessments:* 18 waivers of the statutory and regulatory requirements under Title I, Part A of the ESEA that required States to apply the same academic content and academic achievement standards to, and to use the same academic assessment for, all public schools and public school children in the State; 13 waivers that allowed students (except those with the most significant cognitive disabilities) to take only one assessment in each content area in 2013–2014—either the current State assessment or the full form of the field test of the new assessments aligned to college- and career-ready standards; four waivers permitting the State to assess students who were not yet enrolled in high school but who took advanced, high school level coursework with the corresponding advanced, high school level assessment alone; three waivers permitting students with the most significant cognitive disabilities within the State to take only one assessment in each content area in 2013–2014—either the current State alternate assessments based on alternate academic achievement standards or the field test of new alternate assessments; and one waiver permitting a State to administer the high school exit examination to high school students in grade 10 and the alternate performance assessment to students with the most significant cognitive disabilities;

(f) Two waivers of the third of three annual measureable achievement objectives (AMAOs 3) under Title III, allowing States to use the same targets used to determine AYP under Title I in place of the State's AMOs;

(g) One waiver of the requirement under Title I, Part A to provide parents notice of public school choice options at least 14 days before the start of the school year; and

(h) 10 waivers of the Teacher Incentive Fund (TIF) program absolute priority requirement in the notice of final priorities (NFR) that required each TIF grantee to develop a rigorous evaluation system for teachers and principals, and of one of the five core elements in the NFR.

I. ESEA Flexibility Waivers

A. Flexibility Regarding the 2014 Timeline for Determining AYP

The Department waived the requirements in section 1111(b)(2)(E)–(H) of the ESEA that prescribe how an SEA establishes AMOs for determining AYP to ensure that all students met or exceeded the State's proficient level of academic achievement on the State's assessments in reading/language arts and mathematics no later than the end of the 2013—2014 school year. Under this waiver, an SEA no longer needed to follow the statutory procedures for setting AMOs to use in determining AYP. Instead, an SEA had flexibility to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.

Provisions waived: Section 1111(b)(2)(E)–(H) of the ESEA.

B. Flexibility in Implementation of School Improvement Requirements

The Department waived the requirements in section 1116(b) of the ESEA for an LEA to identify for improvement, corrective action, or restructuring, as appropriate, a Title I school that failed, for two consecutive years or more, to make AYP, and for a school so identified and its LEA to take certain improvement actions. Under this waiver, an LEA was no longer required to identify respective Title I schools for improvement, corrective action, or restructuring, and neither the LEA nor its schools were required to take statutorily required improvement actions, including providing public school choice and supplemental educational services (SES) to eligible students. An LEA was also exempt from administrative and reporting requirements related to school improvement.

Provision waived: Section 1116(b) of the ESEA, except that (b)(13) was not waived.

C. Flexibility in Implementation of LEA Improvement

The Department waived the requirements in section 1116(c) of the ESEA for an SEA to identify for improvement or corrective action, as appropriate, an LEA that, for two consecutive years or more, failed to make AYP, and neither the LEA nor the SEA was required to take statutorily required improvement actions. An LEA was also exempt from associated administrative and reporting requirements related to LEA improvement.

Provisions waived: Section 1116(c)(3) and (5)–(11) of the ESEA.

D. Flexibility for Rural LEAs

The Department waived the requirements in sections 6213(b) and 6224(e) of the ESEA that limited participation in, and use of funds under, the Small, Rural School Achievement (SRSA) and Rural and Low-Income School (RLIS) programs based on whether an LEA made AYP and was complying with the requirements in section 1116 of the ESEA. Under the waiver, an LEA that received SRSA or RLIS funds had flexibility to use those

funds for any authorized purpose regardless of the LEA's AYP status.

Provisions waived: Sections 6213(b) and 6224(e) of the ESEA.

E. Flexibility for Schoolwide Programs

The Department waived the requirement in section 1114(a)(1) of the ESEA that a school have a poverty percentage of 40 percent or more in order to operate a schoolwide program. Under this waiver, an LEA had flexibility to operate a schoolwide program in a Title I school that did not meet the 40 percent poverty threshold if the SEA identified the school as a priority school or a focus school, and the LEA implemented interventions consistent with the turnaround principles or interventions that were based on the needs of the students in the school and designed to enhance the entire educational program in the school, as appropriate.

Provision waived: Section 1114(a)(1) of the ESEA.

F. Flexibility To Support School Improvement

The Department waived the requirement in section 1003(a) of the ESEA for an SEA to distribute funds reserved under that section only to LEAs with schools identified for improvement, corrective action, or restructuring. Under this waiver, an SEA had flexibility to allocate ESEA section 1003(a) funds to an LEA in order to serve any priority or focus school, if the SEA determined such school was most in need of additional support.

Provision waived: Section 1003(a) of the ESEA.

G. Flexibility for Reward Schools

The Department waived the provision in section 1117(c)(2)(A) of the ESEA that authorized an SEA to reserve Title I, Part A funds to reward a Title I school that (1) significantly closed the achievement gap between subgroups in the school; or (2) exceeded AYP for two or more consecutive years. Under this waiver, an SEA had flexibility to use funds reserved under section 1117(c)(2)(A) of the ESEA to provide financial rewards to any reward school, if the SEA determined such school was most appropriate to receive a financial reward.

Provision waived: Section 1117(b)(1)(B) of the ESEA.

H. Flexibility Regarding HQT Improvement Plans

The Department waived the requirements in section 2141(a) through (c) of the ESEA for an LEA and SEA to comply with certain requirements for improvement plans regarding highly qualified teachers. Under the waiver, an LEA that did not meet its HQT target did not have to develop an improvement plan under section 2141 of the ESEA and had flexibility in how it used its Title I and Title II funds. An SEA was exempt from the requirements regarding its role in the implementation of those plans, including the requirement that it enter into agreements with LEAs on the use of funds and the requirement that it provide technical assistance to LEAs on their plans.

Provisions waived: Section 2141(a)–(c) of the ESEA.

I. Flexibility To Transfer Certain Funds

The Department waived the limitations in section 6123 of the ESEA that limited the amount of funds an SEA or LEA may transfer from certain ESEA programs to other ESEA programs. Under this waiver, an SEA and its LEAs had flexibility to transfer up to 100 percent of the funds received under the authorized programs among those programs and into Title I, Part A. Moreover, to minimize burden at the State and local levels, the SEA was not required to notify the Department, and its participating LEAs were not required to notify the SEA, prior to transferring funds.

Provisions waived: Section 6123(a), (b)(1), (d), and (e)(1) of the ESEA.

J. Flexibility To Use SIG Funds To Support Priority Schools

The Department waived the requirements in section 1003(g)(4) of the ESEA and the definition of a Tier I school in Section I.A.3 of the SIG final requirements. Under this waiver, an SEA had flexibility to award SIG funds available under section 1003(g) of the ESEA to an LEA to implement one of the four SIG models in any priority school.

Provisions waived: Section 1003(g)(4) of the ESEA and section I.A.3 of the notice of final requirements for SIG Grants, published in the **Federal Register** on October 28, 2010 (74 FR 65618).

Waiver applicants:

- Alabama State Board of Education
- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Delaware Department of Education
- District of Columbia Office of the State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Nevada Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Utah State Office of Education
- Virginia Department of Education
- Wisconsin Department of Public Instruction

K. Flexibility in the Use of 21st CCLC Program Funds

The Department waived requirements in sections 4201(b)(1)(A) and 4204(b)(2)(A) of the ESEA that restricted the activities provided by a community learning center under the 21st CCLC program to activities provided only during non-school hours or periods when school was not in session (*i.e.,* before and after school or during summer recess). Under this waiver, an SEA had flexibility to permit community learning centers to use 21st CCLC funds to support expanded learning time during the school day in addition to activities during non-school hours or periods when school was not in session.

Provisions waived: Section 4201(b)(1)(A) and 4204(b)(2)(A) of the ESEA.

Waiver applicants:

- Alabama State Board of Education
- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Delaware Department of Education

- District of Columbia Office of the State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Nevada Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Utah State Office of Education
- Virginia Department of Education
- Wisconsin Department of Public Instruction

L. Flexibility Regarding Making AYP Determinations

The Department waived the requirements in section 1116(a)(1)(A)–(B) and (c)(1)(A) of the ESEA that required LEAs and SEAs to make determinations of AYP for schools and LEAs, respectively. Instead, an SEA and its LEAs had to report on their report cards performance against the AMOs for all subgroups identified in section 1111(b)(2)(C)(v) of the ESEA, and use performance against the AMOs to support continuous improvement in Title I schools.

Provisions waived: Section 1116(a)(1)(A)–(B) and (c)(1)(A) of the ESEA.

Waiver applicants:

- Alabama State Board of Education
- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Delaware Department of Education
- District of Columbia Office of the State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Nevada Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Utah State Office of Education
- Virginia Department of Education
- Wisconsin Department of Public Instruction

M. Flexibility Regarding Within-District Title I Allocations

The Department waived the requirements in section 1113(a)(3)–(4) of the ESEA that required an LEA to serve eligible schools under Title I in rank order of poverty and to allocate Title I, Part A funds based on that rank ordering. Under this waiver, an LEA had flexibility to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school did not rank sufficiently high to be served based solely on the school's poverty rate.

Provisions waived: Section 1113(a)(3)–(4) and (c)(1) of the ESEA.

Waiver applicants:

- Alabama State Board of Education
- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Delaware Department of Education
- District of Columbia Office of the State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Nevada Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Utah State Office of Education
- Virginia Department of Education
- Wisconsin Department of Public Instruction

II. Extensions of the Obligation Period

A. Waivers to extend the period of availability of SIG ARRA funds.

Extended the period of availability of FY 2009 SIG funds awarded under Public Law 111–5, ARRA.

Provision waived: Tydings Amendment, section 421(b) of the General Education Provisions Act (GEPA) (20 U.S.C. 1225(b)).

Waiver applicants:

- Georgia Department of Education
- New York State Education Department

- Texas Education Agency

B. Waivers to extend the period of availability of SIG funds.

1. Extended the period of availability of FY 2009 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver applicants:

- Georgia Department of Education
- New York State Education Department
- Texas Education Agency

2. Extended the period of availability of FY 2010 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver applicants:

- Arkansas Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Iowa Department of Education
- Louisiana Department of Education
- Mississippi Department of Education
- Nebraska Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- Oklahoma State Department of Education
- Texas Education Agency

3. Extended the period of availability of FY 2011 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver applicants:

- Delaware Department of Education
- Hawaii State Department of Education
- Maine Department of Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- New Jersey Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Rhode Island Department of Education
- Tennessee Department of Education
- Wisconsin Department of Public Instruction

4. Extended the period of availability of FY 2012 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver applicants:

- Alabama State Board of Education
- Arizona Department of Education
- California Department of Education
- Florida Department of Education
- Hawaii State Department of Education
- Illinois State Board of Education
- Iowa Department of Education
- Maine Department of Education
- Maryland State Department of Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Dakota Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- Wisconsin Department of Public Instruction

5. Extended the period of availability of FY 2013 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver applicants:

- Alaska Department of Education and Early Development
- Tennessee Department of Education
- Wisconsin Department of Public Instruction

C. Waiver to extend the period of availability of FY 2012 funds received under section 1003(g) of the ESEA and included in Consolidated Grant funds for Insular Areas.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver applicant:

- Virgin Islands Department of Education

D. Waiver to extend the period of availability of FY 2012 funds for the Mathematics and Science Partnerships program awarded under Title II, Part B of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver applicant:

- Illinois State Board of Education

III. Waivers of School Eligibility Requirements and Definition of ''Persistently Lowest-Achieving Schools''

Waivers to replace the list of Tier I, Tier II, and Tier III schools with the State's list of priority schools and to replace the definition of ''persistently lowest-achieving schools'' with the State's definition of ''priority schools.''

Provisions waived: Sections I.A.1 and I.A.3 of the SIG final requirements, 75 FR 66363.

Waiver applicants:

- California Department of Education
- Connecticut State Department of Education
- Delaware Department of Education
- Florida Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- New Mexico Public Education Department
- South Dakota Department of Education

IV. Waivers Allowing SEAs To Approve Schools or LEAs Identified as in Need of Improvement To Become SES Providers

Waivers permitting SEAs to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as an SES provider.

Provisions waived: 34 CFR 200.47(b)(1)(iv)(A) and (B).

Waiver applicants:

- California Department of Education
- Illinois State Board of Education
- Montana Office of Public Instruction
- North Dakota Office of Public Instruction
- Washington Office of the Superintendent of Public Instruction
- Wyoming Department of Education

V. Waivers Allowing Substitution of State Academic Standards and Assessments

Provisions waived: Section 1111(b)(1)(B), (b)(3)(A), (b)(3)(C)(i), and (b)(3)(C)(ii) of the ESEA, and 34 CFR 200.1(a)(1).

A. One-year waiver of the statutory and regulatory requirements under Title I, Part A of the ESEA that required States to apply the same academic content and academic achievement

standards to, and to use the same academic assessment for, all public schools and public school children in the State.

Waiver applicants:

- California Department of Education
- Connecticut State Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Iowa Department of Education
- Kansas State Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Mississippi Department of Education
- Nevada Department of Education
- New York State Department of Education
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Rhode Island Department of Education
- South Dakota Department of Education
- Vermont Agency of Education
- Washington Office of the Superintendent of Public Instruction

B. Waiver permitting students (except those with the most significant cognitive disabilities) to take only one assessment in each content area in 2013–2014—either the current State assessment or the full form of the field test of the new assessments aligned to college- and career-ready standards.

Waiver applicants:

- California Department of Education
- Connecticut State Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Iowa Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Nevada Department of Education
- Oregon Department of Education
- South Dakota Department of Education
- Vermont Agency of Education
- Washington Office of the Superintendent of Public Instruction

C. Waiver permitting the State to assess students who were not yet enrolled in high school but who took advanced, high school level coursework with the corresponding advanced, high school level assessment alone.

Waiver applicants:

- New York State Department of Education
- Ohio Department of Education
- Oklahoma State Department of Education
- Rhode Island Department of Education

D. Waiver permitting students with the most significant cognitive disabilities within the State to take only one assessment in each content area in 2013–2014—either the current State alternate assessments based on alternate academic achievement standards or the field test of new alternate assessments.

Waiver applicants:

- Idaho State Department of Education
- Kansas State Department of Education
- Mississippi Department of Education

E. Waiver permitting a State to administer the high school exit examination to high school students in grade 10 and the alternate performance assessment to students with the most significant cognitive disabilities.

Waiver applicant:

- California Department of Education

VI. AMAO Determinations Under ESEA Title III

One-year waiver to allow the SEA to use, for purposes of AMAO 3, the same targets used in the growth component of its State-developed differentiated recognition, accountability, and support system in reading, writing, and mathematics, in place of the State's AMOs.

Provision waived: Section 3122(a)(3)(A)(iii) of the ESEA.

Waiver applicants:

- Nevada Department of Education
- Oregon Department of Education

VII. Waivers Regarding Public School Choice Notice

Allowed a State to postpone notice of public school choice options beyond 14 days before the start of the school year to parents of eligible children attending schools that were newly identified for improvement or made AYP in the previous year, but did not exit improvement status.

Provisions waived: Section 1116(b)(1)(E)(i) of the ESEA and 34 CFR 200.37(b)(4)(iv).

Waiver applicant:

- Wyoming Department of Education

VIII. Waiver of Application Requirements for the TIF Program

Waiver of two TIF requirements, permitting: (1) LEAs to use results of State assessments as the measure of student growth for the performance evaluations for teachers of tested grades and subjects, and (2) eligibility for TIF-funded performance-based compensation to be based on results of evaluations that include such a measure of student growth.

Provision waived: Priority 2 of the TIF notice of final priorities, requirements, and definitions, published in the **Federal Register** on June 14, 2012 (77 FR 35785).

Waiver applicants:

- Achievement First (Connecticut)
- Alliance Collins Family College-Ready High School (California)
- Alternatives in Action High School (California)
- Aspire Vanguard College Preparatory Academy (California)
- Delhi Unified School District (California)
- Lucia Mar Unified School District (California)
- National Board for Professional Teaching Standards (Virginia)
- New Haven Public School System (Connecticut)
- Northern Humboldt Union High School District (California)
- Maine School Administrative District No. 11 (Maine)

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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Dated: October 3, 2017.

Jason Botel,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2017–21620 Filed 10–5–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act of 1965, as Amended

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2011 under the waiver authority of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA).

The ESEA requires that the Department publish in the **Federal Register**, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during 2011.

FOR FURTHER INFORMATION CONTACT: Kia Weems, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W341, Washington, DC 20202. Telephone: (202) 260–2221 or by email: *Kia.Weems@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In 2011, the Department granted a total of 157 waivers under the waiver authority in section 9401 of the ESEA. We granted:

(a) 67 Waivers extending the period in which funds were available for obligation: 28 waivers extending the period for ESEA State-administered formula grant programs that received fiscal year (FY) 2009 funds made available under Public Law 111–8, the Department of Education Appropriations Act, 2009; 25 waivers for ESEA State-administered formula grant programs that received FY 2009 funds made available under Public Law 111–5, the American Recovery and Reinvestment Act of 2009 (ARRA); and 14 waivers for School Improvement Grants (SIG) funds;

(b) 30 waivers relating to SIG program requirements: Three waivers of the requirement for SEAs to carry over 25 percent of their FY 2009 funds, combine those funds with FY 2010 SIG funds, and award those funds to eligible local educational agencies (LEAs); four waivers pertaining to SEAs' requests to carry over FY 2009 and FY 2010 SIG funds and to award those funds to LEAs through a competition conducted during the 2011–2012 school year; four waivers based on the determination that an SEA would not be able to submit an approvable application prior to September 30, 2011, and, as a result, absent the waiver, its FY 2010 SIG funds would expire and the SEA would not be able to support interventions in its persistently lowest-achieving schools; and 19 waivers granting additional time to meet the teacher and principal evaluation requirement for schools in the first (2010–2011 school year) and second (2011–2012 school year) cohorts of SIG grants;

(c) Five waivers of requirements related to State academic assessments and school improvement: Three waivers allowing LEAs to waive the requirement to use State academic assessments and other academic indicators to review progress to determine whether a school is making adequate yearly progress (AYP); one waiver of the requirement to ensure that the results of State academic assessments are available to LEAs before the beginning of the school year following the one in which the assessments were administered; and one waiver of the deadline to identify schools for improvement, corrective action, or restructuring;

(d) 41 waivers of requirements related to supplemental educational services (SES) and public school choice: 22 waivers to permit SEAs to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as an SES provider; 16 waivers of the requirement for LEAs to spend an amount equal to 20 percent of their Title I allocation on SES and transportation for public school choice; and three waivers of the requirement for LEAs to provide parents of eligible students with notice of their public school choice options at least 14 days before the start of the school year;

(e) Nine waivers relating to the requirement that each State plan demonstrate the adoption of challenging academic content standards and challenging student academic achievement standards: six waivers of the annual requirement that the assessments administered be aligned with the State's academic content and achievement standards; two waivers of the requirement for States to use the same academic assessments to measure the achievement of all students and to determine AYP; and one waiver of the requirement to include all students enrolled at the time of testing in the participation rate calculations used to determine AYP;

(f) Two waivers relating to determining eligible school attendance areas: One waiver of the requirement that an eligible school attendance area have a percentage of children from low-income families that is at least as high as the percentage of children from low-income families served by the LEA as a whole;

(g) One waiver of the requirement that not more than five percent of funds be used to provide financial incentives and rewards to teachers;

(h) One waiver to allow an LEA to operate a schoolwide program even though its percentage of students from low-income families is less than 40 percent; and

(i) One waiver of the Teacher Incentive Fund (TIF) program absolute priority requirement in the notice inviting applications (NIA) that requires each TIF grantee to develop a rigorous evaluation system for teachers and principals, and of one of the five core elements in the NIA.

Waiver Data

I. Extensions of the Obligation Period

A. Waivers granted for ESEA State-administered formula grant programs that extended until September 30, 2012, the period of availability for FY 2009 funds awarded under Public Law 111–8, the Department of Education Appropriations Act, 2009.

Provision waived: Tydings Amendment, section 421(b) of the General Education Provisions Act (GEPA) (20 U.S.C. 1225(b)).

Waiver applicants, approved dates, and affected programs:

- Arizona Department of Education, December 15, 2011, Title I, Part A; Title I, Part C; Title II, Part B; Title II, Part D; and Title VI, Section 6111;
- California Department of Education, December 19, 2011, Title II, Part D;
- Colorado Department of Education, November 29, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title I, Part C; Title II, Part A; Title II, Part D; Title III, Part A; Title IV, Part A; Title IV, Part B; and Title VI, Section 6111;
- District of Columbia Office of the State Superintendent of Education, December 15, 2011, Title I, Part A; Title I, Part D; Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; Title IV, Part A; Title IV, Part B; and Title VI, Section 6111;

- Florida Department of Education, December 15, 2011, Title II, Part B; Title II, Part D; and Title IV, Part A;
- Indiana Department of Education, November 28, 2011, Title I, Part C; Title II, Part D; and Title IV, Part A;
- Kansas Department of Education, November 14, 2011, Title IV, Part A; and Title IV, Part B;
- Louisiana Department of Education, December 15, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title I, Part C; Title I, Part D; Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; and Title IV, Part A;
- Maine Department of Education, December 19, 2011, Title I, Part C;
- Maryland Department of Education, November 21, 2011, Title I, Part A; Title II, Part B; Title II, Part D; Title III, Part A; and Title IV, Part A;
- Michigan Department of Education, November 29, 2011, Title I, Part A; Title I, Part D; Title II, Part D; and Title IV, Part A;
- Minnesota Department of Education, November 14, 2011, Title I, Part A; Title I, Part C; Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; Title IV, Part A; and Title VI, Section 6111;
- Nebraska Department of Education, November 22, 2011, Title I, Part A; Title I, Part C ; Title I, Part C (Migrant Education Consortium Incentive Grants); Title I, Part C (Migrant Education Data Quality Grants); Title II, Part A; Title II, Part D; Title III, Part A; and Title IV, Part A;
- Nevada Department of Education, December 15, 2011, Title I, Part A; and Title II, Part D;
- New Hampshire Department of Education, December 15, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title I, Part C; Title I, Part D; Title II, Part A; Title II, Part D; Title III, Part A; Title IV, Part A; and Title IV, Part B;
- New Jersey Department of Education, November 28, 2011, Title I, Part C (Migrant Education Consortium Incentive Grants); Title I, Part C (Migrant Education Student Information Exchange Data Quality Grants); and Title IV, Part A;
- New Mexico Public Education Department, December 19, 2011, Title I, Part B, Subpart 3; Title II, Part D; and Title IV, Part A;
- North Carolina Department of Public Instruction, November 14, 2011, Title I, Part C; and Title IV, Part A;
- North Dakota Department of Public Instruction, December 19, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title II, Part A; Title II, Part B; Title II, Part D; Title IV, Part A; and Title IV, Part B;
- Oklahoma State Department of Education, November 28, 2011, Title IV, Part A;
- Puerto Rico Department of Education, December 19, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title I, Part D; Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; Title IV, Part A; Title IV, Part B; and Title VI, Section 6111;
- Rhode Island Department of Education, November 28, 2011, Title II, Part D;
- South Carolina Department of Education, December 18, 2011, Title II, Part B;
- Tennessee Department of Education, November 28, 2011, Title I, Part A (including funds reserved for State Academic Achievement Awards program authorized in section 1117(c)(2)(A) of the ESEA and school improvement activities authorized in section 1003(a) of the ESEA); Title II, Part D; and Title IV, Part A;
- Vermont Agency of Education, December 15, 2011, Title IV, Part A;
- Virginia Department of Education, December 15, 2011, Title I, Part A; Title I, Part B, Subpart 3; Title I, Part D; Title II, Part A; Title II, Part B; Title II, Part D; Title III, Part A; Title IV, Part A; and Title IV, Part B;
- Washington Office of the Superintendent of Public Instruction, December 15, 2011, Title I, Part B, Subpart 3; and Title II, Part A; and
- Wyoming Department of Education, December 19, 2011, Title I, Part A.

B. Waivers granted for ESEA State-administered formula grant programs that extended until September 30, 2012, the period of availability for FY 2009 funds awarded under Public Law 111–5, ARRA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver applicants, approved dates, and affected programs:

- Arizona Department of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- California Department of Education, December 19, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Colorado Department of Education, November 29, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- District of Columbia Office of the State Superintendent of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Florida Department of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Indiana Department of Education, November 28, 2011, Title I, Part A (ARRA);
- Kansas Department of Education, November 14, 2011, Title I, Part A (ARRA);
- Louisiana Department of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Maine Department of Education, December 19, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Maryland Department of Education, November 21, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Michigan Department of Education, November 29, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Minnesota Department of Education, November 14, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Nebraska Department of Education, November 22, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Nevada Department of Education, December 15, 2011, Title I, Part A (ARRA);
- New Hampshire Department of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- New Jersey Department of Education, November 28, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- New Mexico Public Education Department, December 19, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- North Carolina Department of Public Instruction, November 14, 2011, Title I, Part A (ARRA);
- North Dakota Department of Public Instruction, December 19, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Puerto Rico Department of Education, December 19, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Tennessee Department of Education, November 28, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Vermont Agency of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Virginia Department of Education, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA);
- Washington Office of the Superintendent of Public Instruction, December 15, 2011, Title I, Part A (ARRA); and Title II, Part D (ARRA); and
- Wyoming Department of Education, December 19, 2011, Title II, Part D (ARRA).

C. Waivers of SIG Requirements.

1. Extended the period of availability of FY 2008 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver applicants and approved dates:

- Alabama Department of Education, January 26, 2011;
- Colorado Department of Education, January 18, 2011;
- Illinois State Board of Education, January 26, 2011;
- Maryland Department of Education, January 26, 2011;
- Massachusetts Department of Elementary and Secondary Education, January 18, 2011;
- Massachusetts Department of Elementary and Secondary Education, May 17, 2011 (second extension);
- New Hampshire Department of Education, April 13, 2011;
- New Jersey Department of Education, January 26, 2011;
- Ohio Department of Education, January 26, 2011; and
- Puerto Rico Department of Education, January 26, 2011.

2. Extended the period of availability of FY 2009 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver applicants and approved dates:

- Arizona Department of Education, January 24, 2011.

3. Extended the period of availability of FY 2010 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver applicants and approved dates:

- Missouri Department of Elementary and Secondary Education, September 20, 2011;
- Nebraska Department of Education, July 25, 2011; and
- Pennsylvania Department of Education, December 13, 2011.

II. Waivers of SIG Requirements

A. *Waivers of SIG program final requirement to carry over 25 percent of FY 2009 funds.* The waivers permitted applicants to combine those funds with FY 2010 SIG funds and award those funds to eligible LEAs consistent with the final requirements.

Provisions waived: Section 1003(g) of the ESEA; 75 FR 66363.

Waiver applicants and approved dates:

- Minnesota Department of Education, June 13, 2011;
- Montana Office of Public Instruction, August 2, 2011; and
- New Mexico Public Education Department, March 28, 2011.

B. *Waivers to carry over SIG funds.* The waiver allowed States to carry over their FY 2009 and FY 2010 SIG funds and to award those funds to LEAs through a competition conducted during the 2011–2012 school year because their LEAs did not have the capacity to effectively plan and implement intervention models for the 2011–2012 school year in such a short timeframe.

Provision waived: 75 FR 66363.

Waiver applicants and approved dates:

- Alabama Department of Education, September 20, 2011;
- Bureau of Indian Education, September 20, 2011;
- California Department of Education, September 20, 2011; and
- Missouri Department of Elementary and Secondary Education, September 20, 2011.

C. *Waivers of SIG program requirement that, to receive a FY 2010 SIG grant, an SEA must have submitted an approvable application by a date certain.* The waivers provided SEAs additional time to submit their applications.

Provisions waived: Section 1003(g)(4) of the ESEA; 75 FR 66363.

Waiver applicants and approved dates:

- Hawaii Department of Education, September 21, 2011;
- Rhode Island Department of Education, September 20, 2011;
- Tennessee Department of Education, September 20, 2011; and
- Vermont Agency of Education, September 21, 2011.

D. *Waivers granting additional time to meet teacher and principal evaluation requirements (cohorts 1 and 2 SIG schools).* The waivers allowed SEAs to permit an LEA that was implementing a transformation model with SIG funds during the 2010–2011 school year to have additional time to meet the teacher and principal evaluation requirement in schools that were not able to do so that year.

Provisions waived: Section 1003(g) of the ESEA; Section I.A.2(d)(1)(i)(B) of the SIG final requirements.

Waiver applicants and approved dates:

- Alaska Department of Education and Early Development, September 15, 2011;
- Arizona Department of Education, September 15, 2011;
- Arkansas State Department of Education, September 15, 2011;
- Delaware Department of Education, October 5, 2011;
- Iowa Department of Education, September 15, 2011;
- Kansas Department of Education, September 20, 2011;
- Kentucky Department of Education, September 19, 2011;
- Maine Department of Education, November 4, 2011;
- Montana Office of Public Instruction, September 15, 2011;
- Nevada Department of Education, November 14, 2011;
- New Hampshire Department of Education, November 4, 2011;
- New Mexico Public Education Department, November 4, 2011;
- North Dakota Department of Public Instruction, September 15, 2011;
- Ohio Department of Education, September 15, 2011;
- Oklahoma State Department of Education, October 5, 2011;
- South Carolina Department of Education, September 29, 2011;
- South Dakota Department of Education, September 27, 2011;
- Utah State Office of Education, September 20, 2011; and
- Virginia Department of Education, October 5, 2011.

III. Waivers Related to State Academic Assessment and School and LEA Improvement

A. *Waivers of the Requirements to Make AYP Determinations.*

1. *Waiver applicant: Tennessee Department of Education*

- Provisions waived: Section 1116(a)(1)(A) and (c)(1)(A) of the ESEA; 34 CFR 200.30 and 200.50(a).
- *Date waiver granted:* January 24, 2011.
- *Description of waiver:* A waiver of the requirements to use the State's academic assessments and other academic indicators described in the State plan to review progress to determine whether Harpeth High School and Houston County High School were making AYP for the 2009–2010 school year.

2. *Waiver applicant: West Virginia Department of Education*

- *Provisions waived:* Section 1116(a)(1)(A) of the ESEA; 34 CFR 200.30.
- *Date waiver granted:* August 1, 2011.
- *Description of waiver:* A one-year waiver of the requirement to use results of the statewide assessment to make AYP determinations for Kenova Elementary School.

B. *Waivers of SEA Requirement to Make Academic Assessment Results Available to LEAs.*

1. *Waiver applicant: Kentucky Department of Education*

- *Provision waived:* Section 1116(a)(2) of the ESEA.

• *Date waiver granted:* March 25, 2011.

• *Description of waiver:* A one-year waiver of the requirement in section 1116(a)(2) of the ESEA that a State make available the results of State academic assessments to LEAs before the beginning of the school year following the one in which the assessments were administered.

C. *Waivers to Reverse Timeline for Offering SES and Public School Choice.* The waivers allowed LEAs to offer SES to eligible Title I schools in year one of school improvement instead of public school choice, and count the costs of providing SES to these students toward the LEAs' 20 percent obligation.

Provisions waived: Section 1116(b)(10) of the ESEA; 34 CFR 200.48.

Waiver applicants and approved dates:

• Alabama Department of Education, July 25, 2011;

• Alaska Department of Education, May 6, 2011;

• California Department of Education, July 25, 2011;

• Connecticut State Department of Education, November 4, 2011;

• Delaware Department of Education, July 25, 2011;

• Maryland Department of Education, July 28, 2011;

• Massachusetts Department of Elementary and Secondary Education, June 30, 2011;

• Minnesota Department of Education, August 15, 2011;

• Missouri Department of Elementary and Secondary Education, September 15, 2011;

• New Mexico Public Education Department, November 4, 2011;

• North Carolina Department of Public Instruction, August 29, 2011;

• Ohio Department of Education, August 23, 2011;

• Oklahoma State Department of Education, September 22, 2011;

• South Dakota Department of Education, June 29, 2011;

• Virginia Department of Education, July 25, 2011; and

• Washington Office of the Superintendent of Public Instruction, July 25, 2011.

D. *Waivers of Requirement to Identify Schools for Improvement Before the Start of the School Year.*

1. *Waiver applicant: Washington Office of the Superintendent of Public Instruction*

• *Provisions waived:* Section 1116(b)(1)(B) of the ESEA; 34 CFR 200.32(a)(2).

• *Date waiver granted:* June 30, 2011.

• *Description of waiver:* A one-time waiver of the requirement to identify schools for improvement, corrective action, or restructuring no later than the beginning of the school year following the failure to make AYP. This waiver applied only to high schools.

E. *Waivers of Deadline Requirement for Public School Choice for Schools Identified for School Improvement.* Specific LEAs were provided a one-year waiver of the requirement that they provide parents of eligible students with notice of their public school choice options at least 14 days before the start of the school year.

Provisions waived: Section 1116(b)(1)(E)(i) of the ESEA; 34 CFR 200.37(b)(4)(iv).

Waiver applicants and approved dates:

• Colorado Department of Education, May 6, 2011;

• Kentucky Department of Education, March 25, 2011; and

• Washington Office of the Superintendent of Public Instruction, June 30, 2011.

IV. Waivers Allowing SEAs To Approve Schools or LEAs Identified for Improvement To Become SES Providers and Waivers Permitting Certain LEAs Identified for Improvement or Corrective Action To Apply to Their SEA To Serve as an SES Provider in the 2011–2012 School Year

Provisions waived: 34 CFR 200.47(b)(1)(iv)(A) and (B).

Waiver applicants and approved dates:

• Alaska Department of Education, May 6, 2011;

• California Department of Education, July 25, 2011;

• Colorado Department of Education, July 25, 2011;

• Connecticut Department of Education, November 4, 2011;

• Delaware Department of Education, July 25, 2011;

• Florida Department of Education, September 28, 2011;

• Massachusetts Department of Elementary and Secondary Education, June 30, 2011;

• Minnesota Department of Education, August 15, 2011;

• Missouri Department of Elementary and Secondary Education, September 15, 2011;

• Montana Office of Public Instruction, July 25, 2011;

• New Mexico Public Education Department, November 4, 2011;

• New York State Education Department, February 10, 2011;

• North Dakota Department of Public Instruction, June 6, 2011;

• Ohio Department of Education, August 23, 2011;

• Oklahoma State Department of Education, May 3, 2011;

• Rhode Island Department of Education, June 30, 2011;

• South Carolina Department of Education, August 1, 2011;

• South Dakota Department of Education, June 29, 2011;

• Twin Rivers Unified School District, April 5, 2011 (a two-year waiver to allow Twin Rivers Unified School District to be eligible to apply to serve as an SES provider in the 2010–2011 and 2011–2012 school years even though it was identified for improvement);

• Virginia Department of Education, July 25, 2011;

• Washington Office of the Superintendent of Public Instruction, July 25, 2011; and

• Wisconsin Department of Public Instruction, November 4, 2011.

V. Waiver of State Plan Requirements Relating to Academic Assessments

A. *Waivers of the Requirements that Annual Assessments Align with State Academic Content and Achievement Standards and that All Students Be Assessed in Mathematics in High School.*

1. *Waiver applicant: Florida Department of Education*

• *Provisions waived:* Section 1111(b)(3)(C)(v)(1)(cc) and (b)(3)(C)(ix) of the ESEA; 34 CFR 200.5(a)(2)(ii) and 200.6.

• *Date waiver granted:* January 19, 2011.

• *Description of waiver:* A one-time waiver of the requirement to assess all students at least once in grades 10 through 12 in mathematics.

2. *Waiver applicant: Kansas Department of Education*

• *Provisions waived:* Section 1111(b)(3)(C)(ii) of the ESEA; 34 CFR 200.2(b)(3)(i).

• *Date waiver granted:* April 5, 2011.

• *Description of waiver:* A one-year waiver, with respect to McPherson Unified School District, of the statutory and regulatory requirements under Title I, Part A of the ESEA that required the assessments administered to be aligned with the State's academic content and achievement standards.

3. *Waiver applicant: Tennessee Department of Education*

• *Provisions waived:* Section 1111(b)(3)(A), (b)(3)(C)(v)(II), and (b)(3)(C)(vii) of the ESEA; 34 CFR 200.2(a)(1), 200.5(a)(2), and 200.5(b).

• *Date waiver granted:* January 24, 2011.

• *Description of waiver:* A waiver of the requirement to assess Harpeth High School and Houston County High

School students annually in reading/language arts, mathematics, and science for the 2009–2010 school year.

4. *Waiver applicant: West Virginia Department of Education*

• *Provisions waived:* Section 1111(b)(3)(A) of the ESEA; 34 CFR 200.2(a)(1).

• *Date waiver granted:* August 1, 2011.

• *Description of waiver:* A one-year waiver of the requirement to assess students in reading/language arts, mathematics, and science at Kenova Elementary School, which closed during the spring 2011 testing window because of structural safety issues caused by flooding.

B. *Waivers of the State Requirements to Use the Same Academic Measurement Assessments to Measure the Achievement of All Students and to Determine AYP.*

Provisions waived: Section 1111(b)(3)(A) and (b)(3)(C)(i) of the ESEA; 34 CFR 200.2(b)(1).

Waiver applicants and approved dates:

• Kansas Department of Education, April 5, 2011 (a one-year waiver with respect to McPherson Unified School District of the statutory and regulatory requirements under Title I, Part A of the ESEA that required the State to use the same academic assessments to measure the achievement of all students and to determine AYP); and

• Washington Office of the Superintendent of Public Instruction, June 30, 2011. A one-year waiver of the statutory and regulatory requirements under Title I, Part A of the ESEA that required the State to use the same academic assessments to measure the achievement of all students and to determine AYP.

C. *Waivers of the Requirement to Include All Students Enrolled at the Time of Testing in the Participation Rate Calculations.*

1. *Waiver applicant: Florida Department of Education*

• *Provisions waived:* Section 1111(b)(2)(I)(ii) of the ESEA; 34 CFR 200.20(c)(1)(i).

• *Date waiver granted:* January 19, 2011.

• *Description of waiver:* A waiver of the requirement to include all students enrolled at the time of testing in the participation rate calculations used to determine AYP. This waiver authorized Florida to exclude students who took Algebra I as 6th, 7th, or 8th graders during school years 2007–2008 through 2009–2010 from participation rate calculations used in determining AYP based on assessment results from the relevant school year.

VI. Waivers of Eligible School Attendance Area Requirements

A. *Waivers of Requirements for Determining Eligible School Attendance Areas.*

1. *Waiver applicant: Keene School District*

• *Provision waived:* Section 1113(a)(2)(B) of the ESEA.

• *Date waiver granted:* June 29, 2011.

• *Description of waiver:* A waiver for four years, beginning in school year 2011–2012, of the requirements concerning Title I school eligibility to ensure continuity of Title I services for eligible children in Daniels Elementary School and Symonds Elementary School. This waiver enabled both schools to continue offering Title I programs to their eligible students without the interruption caused by small demographic changes that affected eligibility for Title I.

B. *Waiver of the Limitation on Reserving Funds for Financial Incentives and Rewards.*

1. *Waiver applicant: Hillsborough County Public Schools*

• *Provision waived:* Section 1113(c)(4) of the ESEA.

• *Date waiver granted:* August 1, 2011.

• *Description of waiver:* A one-year waiver of the 5 percent cap on the amount of Title I funds that an LEA reserve for financial incentives and awards so that Hillsborough County Public Schools could reserve up to 8.8 percent of their FY 2011 Title I, Part A allocation for such purposes.

VII. Waiver of the Requirements for Schoolwide Programs

A. *Waiver of the 40 Percent Poverty Threshold for Schoolwide Programs.*

1. *Waiver applicant: Aberdeen Public School District 6–1*

• *Provision waived:* Section 1114(a)(1) of the ESEA.

• *Date waiver granted:* November 4, 2011.

• *Description of waiver:* A waiver to allow Simmons Elementary School to operate a schoolwide program even though its percentage of students from low-income families was less than 40 percent, effective for four years or until the reauthorization of the ESEA, whichever came first.

VIII. Waivers Regarding Teacher Incentive Fund (TIF) Requirements

A. *Waiver of Application Requirements for the TIF Program.*

1. *Waiver applicant: Community Training and Assistance Center*

• *Provision waived:* Section 9401 of the ESEA.

• *Date waiver granted:* July 11, 2011.

• *Description of waiver:* Waiver of two requirements of TIF: (1) Absolute Priority 1 in the NIA that required each TIF grantee to develop a rigorous evaluation system for teachers and principals that took into account student growth as a significant measure and multiple classroom observations; and (2) one of the required five core elements in the NIA, each of which was to have been in place before a grantee could make incentive payments using TIF funds (75 FR 28741).

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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Dated: October 3, 2017.

Jason Botel,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2017–21622 Filed 10–5–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act of 1965, as Amended

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2013 under the waiver authority of the Elementary and

Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), including waivers related to flexibilities granted to States in exchange for State-led reforms (ESEA flexibility).

The ESEA requires that the Department publish in the **Federal Register**, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during 2013.

FOR FURTHER INFORMATION CONTACT: Kia Weems, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W341, Washington, DC 20202. Telephone: (202) 260–2221 or by email: *kia.weems@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In 2013, the Department granted waivers through an initiative known as ESEA flexibility to 45 States under the waiver authority in section 9401 of the ESEA, in exchange for a rigorous and comprehensive State-developed plan designed to improve student academic achievement and increase the quality of instruction.[1] The Department also granted individual waivers to certain States under the waiver authority in section 9401 of the ESEA.

We granted:

(a) ESEA Flexibility: The Department granted the following ten waivers to 45 SEAs under ESEA flexibility:

1. Flexibility Regarding the 2013–2014 Timeline for Determining Adequate Yearly Progress (AYP);

2. Flexibility in Implementation of School Improvement Requirements;

3. Flexibility in Implementation of Local Educational Agency (LEA) Improvement Requirements;

4. Flexibility for Rural LEAs;

5. Flexibility for Schoolwide Programs;

6. Flexibility to Support School Improvement;

7. Flexibility for Reward Schools;

8. Flexibility Regarding Highly Qualified Teacher (HQT) Improvement Plans;

9. Flexibility to Transfer Certain Funds; and

10. Flexibility to Use School Improvement Grant (SIG) Funds to Support Priority Schools.

In addition to waiving the ten provisions listed above, the Department granted three optional waivers under ESEA flexibility related to the following:

1. Waivers of the 21st Century Community Learning Centers (21st CCLC) requirement to provide services during non-school hours or when school is not in session;

2. Waivers of the requirement to make AYP determinations; and

3. Waivers of requirements pertaining to Title I, Part A within-district allocations.

(b) 119 waivers extending the period in which funds were available for obligation: 30 waivers extending the period for State-administered ESEA formula grant programs that received fiscal year (FY) 2011 funds under the regular appropriation or FY 2009 funds under the American Recovery and Reinvestment Act (ARRA), one waiver extending the period for the 21st CCLC, 84 waivers for school improvement activities, and four waivers extending the period for the Striving Readers Comprehensive Literacy Formula Grant Program funds;

(c) Three waivers allowing SEAs to approve schools or LEAs identified as in need of improvement to become supplemental educational services (SES) providers;

(d) Two waivers pertaining to school eligibility requirements and the definition of persistently lowest-achieving schools;

(e) Eight waivers of requirements related to State academic standards or assessments: Three waivers allowing extensions of the growth model pilot; four waivers related to the substitution of standards or assessments; and one waiver permitting the use of annual measureable achievement objectives (AMOs) to make AYP determination based on assessments administered the previous year;

(f) 45 waivers allowing SEAs to waive the carryover limitation more than once every three years for their Title I, Part A allocation; and

(g) One waiver of the requirement that an LEA provide parents of eligible students with notice of their public school choice options at least 14 days before the start of school year.

I. ESEA Flexibility Waivers

A. Flexibility Regarding the 2013–2014 Timeline for Determining AYP

The Department waived the requirements in section 1111(b)(2)(E)–(H) of the ESEA that prescribe how an SEA establishes AMOs for determining AYP to ensure that all students met or exceeded the State's proficient level of academic achievement on the State's assessments in reading/language arts and mathematics no later than the end of the 2013–2014 school year. Under this waiver, an SEA no longer needed to follow the statutory procedures for setting AMOs to use in determining AYP. Instead, an SEA had flexibility to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.

Provisions waived: Section 1111(b)(2)(E)–(H) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

B. Flexibility in Implementation of School Improvement Requirements

The Department waived the requirements in section 1116(b) of the ESEA for an LEA to identify for improvement, corrective action, or restructuring, as appropriate, a Title I school that failed, for two consecutive years or more, to make AYP, and for a school so identified and its LEA to take certain improvement actions. Under this waiver, an LEA was no longer required to identify respective Title I schools for improvement, corrective action, or restructuring, and neither the LEA nor its schools were required to take statutorily required improvement actions, including providing public school choice and SES to eligible

[1] Additional information regarding ESEA flexibility can be found at: *http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html.*

students. An LEA was also exempt from administrative and reporting requirements related to school improvement.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- San Francisco Unified School District (California)
- Los Angeles Unified School District (California)
- Fresno Unified School District (California)
- Sanger Unified School District (California)
- Santa Ana Unified School District (California)
- Sacramento City Unified School District (California)
- Long Beach Unified School District (California)
- Oakland Unified School District (California)

C. Flexibility in Implementation of LEA Improvement

The Department waived the requirements in section 1116(c) of the ESEA for an SEA to identify for improvement or corrective action, as appropriate, an LEA that, for two consecutive years or more, failed to make AYP, and neither the LEA nor the SEA was required to take statutorily required improvement actions. An LEA was also exempt from associated administrative and reporting requirements related to LEA improvement.

Provisions waived: Section 1116(c)(3) and (5)–(11) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

D. Flexibility for Rural LEAs

The Department waived the requirements in sections 6213(b) and 6224(e) of the ESEA that limited participation in, and use of funds under, the Small, Rural School Achievement (SRSA) and RLIS programs based on whether an LEA made AYP and was complying with the requirements in section 1116 of the ESEA. Under the waiver, an LEA that received SRSA or RLIS funds had flexibility to use those funds for any authorized purpose regardless of the LEA's AYP status.

Provisions waived: Sections 6213(b) and 6224(e) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

E. Flexibility for Schoolwide Programs

The Department waived the requirement in section 1114(a)(1) of the ESEA that a school have a poverty percentage of 40 percent or more in order to operate a schoolwide program. Under this waiver, an LEA had flexibility to operate a schoolwide program in a Title I school that did not meet the 40 percent poverty threshold if the SEA identified the school as a priority school or a focus school, and the LEA implemented interventions consistent with the turnaround principles or interventions that were based on the needs of the students in the school and designed to enhance the entire educational program in the school, as appropriate.

Provision waived: Section 1114(a)(1) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- San Francisco Unified School District (California)
- Los Angeles Unified School District (California)
- Fresno Unified School District (California)
- Sanger Unified School District (California)
- Santa Ana Unified School District (California)
- Sacramento City Unified School District (California)
- Long Beach Unified School District (California)
- Oakland Unified School District (California)

F. Flexibility To Support School Improvement

The Department waived the requirement in section 1003(a) of the ESEA for an SEA to distribute funds

reserved under that section only to LEAs with schools identified for improvement, corrective action, or restructuring. Under this waiver, an SEA had flexibility to allocate ESEA section 1003(a) funds to an LEA in order to serve any priority or focus school, if the SEA determined such school was most in need of additional support.

Provision waived: Section 1003(a) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia State Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

G. Flexibility for Reward Schools

The Department waived the provision in section 1117(c)(2)(A) of the ESEA that authorized an SEA to reserve Title I, Part A funds to reward a Title I school that (1) significantly closed the achievement gap between subgroups in the school; or (2) exceeded AYP for two or more consecutive years. Under this waiver, an SEA had flexibility to use funds reserved under section 1117(c)(2)(A) of the ESEA to provide financial rewards to any reward school, if the SEA determined such school was most appropriate to receive a financial reward.

Provision waived: Section 1117(b)(1)(B) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Learning Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

H. Flexibility Regarding HQT Improvement Plans

The Department waived the requirements in section 2141(a) through (c) of the ESEA for an LEA and SEA to comply with certain requirements for improvement plans regarding highly qualified teachers. Under the waiver, an LEA that did not meet its HQT target did not have to develop an improvement plan under section 2141 of the ESEA and had flexibility in how it used its Title I and Title II funds. An SEA was exempt from the requirements regarding its role in the implementation of those plans, including the requirement that it enter into agreements with LEAs on the use of funds and the requirement that it provide technical assistance to LEAs on their plans. This flexibility allowed an SEA and LEA to focus on developing and implementing more meaningful evaluation and support systems.

Provisions waived: Section 2141(a)–(c) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- San Francisco Unified School District (California)
- Los Angeles Unified School District (California)
- Fresno Unified School District (California)
- Sanger Unified School District (California)
- Santa Ana Unified School District (California)
- Sacramento City Unified School District (California)
- Long Beach Unified School District (California)
- Oakland Unified School District (California)

II. Flexibility To Transfer Certain Funds

The Department waived the limitations in section 6123 of the ESEA that limited the amount of funds an SEA or LEA may transfer from certain ESEA programs to other ESEA programs. Under this waiver, an SEA and its LEAs had flexibility to transfer up to 100 percent of the funds received under the authorized programs among those programs and into Title I, Part A programs. Moreover, to minimize burden at the State and local levels, the SEA was not required to notify the Department, and its participating LEAs were not required to notify the SEA, prior to transferring funds.

Provisions waived: Section 6123(a), (b)(1), (d), and (e)(1) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- San Francisco Unified School District (California)
- Los Angeles Unified School District (California)
- Fresno Unified School District (California)
- Sanger Unified School District (California)
- Santa Ana Unified School District (California)
- Sacramento City Unified School District (California)
- Long Beach Unified School District (California)
- Oakland Unified School District (California)

A. Flexibility To Use SIG Funds To Support Priority Schools

The Department waived the requirements in section 1003(g)(4) of the

ESEA and the definition of a ''Tier I school'' in section I.A.3 of the SIG final requirements. Under this waiver, an SEA had flexibility to award SIG funds available under section 1003(g) of the ESEA to an LEA to implement one of the four SIG models in any priority school.

Provision waived: Section 1003(g)(4) of the ESEA and Section I.A.3 of the SIG final requirements (74 FR 65618).

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

B. Flexibility in the Use of 21st CCLC Program Funds

The Department waived requirements in sections 4201(b)(1)(A) and 4204(b)(2)(A) of the ESEA that restricted the activities provided by a community learning center under the 21st CCLC program to activities provided only during non-school hours or periods when school was not in session (*i.e.,* before and after school or during summer recess). Under this waiver, an SEA had flexibility to permit community learning centers to use 21st CCLC funds to support expanded learning time during the school day in addition to activities during non-school hours or periods when school was not in session.

Provisions waived: Sections 4201(b)(1)(A) and 4204(b)(2)(A) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

C. Flexibility Regarding Making AYP Determinations

The Department waived the requirements in section 1116(a)(1)(A)–(B) and (c)(1)(A) of the ESEA that required LEAs and SEAs to make determinations of AYP for schools and LEAs, respectively. Instead, an SEA and its LEAs had to report on their report cards performance against the AMOs for all subgroups identified in section 1111(b)(2)(C)(v) of the ESEA, and use performance against the AMOs to support continuous improvement in Title I schools.

Provisions waived: Section 1116(a)(1)(A)–(B) and (c)(1)(A) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

D. Flexibility Regarding Within-District Title I Allocations

The Department waived the requirements in section 1113(a)(3)–(4) of the ESEA that required an LEA to serve eligible schools under Title I in rank order of poverty and to allocate Title I, Part A funds based on that rank ordering. Under this waiver, an LEA had flexibility to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school did not rank sufficiently high to be served based solely on the school's poverty rate.

Provisions waived: Section 1113(a)(3)–(4) and (c)(1) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Maryland State Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- San Francisco Unified School District (California)
- Los Angeles Unified School District (California)
- Fresno Unified School District (California)
- Sanger Unified School District (California)
- Santa Ana Unified School District (California)
- Sacramento City Unified School District (California)
- Long Beach Unified School District (California)
- Oakland Unified School District (California)

III. Extensions of the Obligation Period

A. The Department granted waivers for ESEA State-administered formula grant programs extending until September 30, 2014, the period of availability for FY 2011 Title I, Part A funds reserved for school improvement activities under section 1003(a) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of the General Education Provisions Act (GEPA) (20 U.S.C. 1225(b)).

Waiver Applicants:

- Maryland State Department of Education
- New York State Department of Education
- Ohio Department of Education
- Oklahoma State Department of Education
- Rhode Island Department of Education
- Virginia Department of Education

B. The Department granted waivers for ESEA State-administered formula

grant programs extending until September 30, 2014, the period of availability of FY 2009 Title I, Part A program funds awarded under ARRA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Alabama State Department of Education
- Arizona Department of Education
- Arkansas Department of Education
- California Department of Education
- Colorado Department of Education
- Florida Department of Education
- Iowa Department of Education
- Kentucky Department of Education
- Maine Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Minnesota Department of Education
- Montana Office of Public Instruction
- Nebraska Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- Oregon Department of Education
- Pennsylvania Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- Tennessee Department of Education
- Texas Education Agency
- West Virginia Department of Education

C. Waivers extending the period of availability of SIG program funds awarded under section 1003(g) of the ESEA.

1. Extended the period of availability of FY 2009 SIG funds until September 30, 2014.

Provision waived: Tydings Amendment, section 421(b) of GEPA.

Waiver Applicants:

- Alabama State Department of Education
- Arizona Department of Education
- Arkansas Department of Education
- California Department of Education
- Colorado Department of Education
- Florida Department of Education
- Iowa Department of Education
- Kentucky Department of Education
- Maine Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Minnesota Department of Education
- Montana Office of Public Instruction
- Nebraska Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- Oregon Department of Education
- Pennsylvania Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

2. Extended the period of availability of FY 2010 SIG funds.

Provision waived: Tydings Amendment, section 421(b) of GEPA.

a. Extension granted until June 1, 2013.

Waiver Applicant:

- Idaho State Department of Education

b. Extension granted until August 1, 2013.

Waiver Applicant:

- Idaho State Department of Education

c. Extension granted until September 30, 2013.

Waiver Applicants:

- Mississippi Department of Education
- Virginia Department of Education

d. Extension granted until September 30, 2014.

Waiver Applicants:

- Alabama State Department of Education
- California Department of Education
- Delaware Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Oklahoma State Department of Education
- Rhode Island Department of Education
- Texas Education Agency

3. Extended the period of availability of FY 2011 SIG funds.

Provision waived: Tydings Amendment, section 421(b) of GEPA.

a. Extension granted until September 30, 2014.

Waiver Applicants:

- Alaska Department of Education and Early Development
- Arizona Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Maine Department of Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- Ohio Department of Education
- Pennsylvania Department of Education
- South Carolina Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Wisconsin Department of Public Education

b. Extension granted until September 30, 2015.

Waiver Applicants:

- California Department of Education
- District of Columbia Office of the State Superintendent of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Missouri Department of Elementary and Secondary Education
- New York State Department of Education
- Oklahoma State Department of Education

4. Extended the period of availability of FY 2012 SIG funds.

Provision waived: Tydings Amendment, section 421(b) of GEPA.

a. Extension granted until September 30, 2015.

Waiver Applicants:

- Arkansas Department of Education
- Delaware Department of Education
- Washington Office of the Superintendent of Public Instruction

b. Extension granted until September 30, 2016.

Waiver Applicants:

- Colorado Department of Education
- District of Columbia Office of the State Superintendent of Education
- Georgia Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Kansas State Department of Education
- Louisiana Department of Education
- Maine Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Nebraska Department of Education
- Nevada Department of Education
- Rhode Island Department of Education

5. Extended the period of availability of FY 2013 SIG funds.

Provision waived: Tydings Amendment, section 421(b) of GEPA.

a. Extension granted until September 30, 2016.

Waiver Applicant:

- Minnesota Department of Education

D. Waivers for the Striving Readers Comprehensive Literacy Grant Program extending the period of availability until December 31, 2013 of FY 2010 funds awarded under Part E, Section 1502 of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA.

Waiver Applicants:

- California Department of Education
- New Mexico Public Education Department
- South Carolina Department of Education
- Tennessee Department of Education

E. Waivers for the 21st CCLC program extending the period of availability of FY 2010 funds until September 30, 2013.

Provision waived: Tydings Amendment, section 421(b) of GEPA.

Waiver Applicant:

- Kansas State Department of Education

IV. Waivers Allowing SEAs To Approve Schools or LEAs Identified as in Need of Improvement To Become SES Providers

The Department permitted SEAs to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as a provider of SES.

Provisions waived: 34 CFR 200.47(b)(1)(iv)(A) and (B).

Waiver Applicants:

- California Department of Education (during the 2014–15 and 2015–16 school years)
- Montana Office of Public Instruction (during the 2013–14 school year)

V. Waivers of School Eligibility Requirements and Definition of Persistently Lowest-Achieving Schools

The Department allowed SEAs to: (A) Waive the school eligibility requirements by replacing the list of Tier I, Tier II, and Tier III schools with their list of priority schools; and (B) replace the definition of ''persistently lowest-achieving schools'' with the State's definition of ''priority schools.''

Provisions waived: Sections I.A.1 and I.A.3 of the SIG final requirements (75 FR 66363).

Waiver Applicants:

- Idaho State Department of Education
- New Jersey Department of Education

VI. Waivers of Academic Standards, Assessments, and Accountability Requirements

A. Two-year extension of waiver permitting SEAs to use their Growth Model Pilots in making accountability determinations based on assessments administered through the 2013–2014 school year.

Provision waived: Section 1111(b)(2) of the ESEA.

Waiver Applicants:

- Delaware Department of Education
- Iowa Department of Education
- Pennsylvania Department of Education

B. Waivers allowing substitution of standards or assessments.

Allowed Kansas to permit McPherson Unified School District, Kansas City, Kansas Public Schools and the Clifton-Clyde Unified School District to: (i) Administer the ACT in high school and the EXPLORE in grade 8 in lieu of the Kansas State assessments; and (ii) use the results of those assessments for accountability purposes.

Provisions waived: Section 1111(b)(1)(B), (b)(3)(A), and (b)(3)(C)(i)–(ii) of the ESEA.

Waiver Applicant:

- Kansas State Department of Education

C. Waiver permitting the use of AMOs to make AYP determinations based on assessments administered the previous year.

Provision waived: Section 1111(b)(2)(H) of the ESEA.

Waiver Applicant:

- Wyoming Department of Education

VII. Waivers Authorizing an SEA To Waive the Carryover Limitation for an LEA Because of Its Receipt of Title I, Part A ARRA Funds

Waiver to permit an SEA to waive the carryover limitation more than once within three years for an LEA that needs the additional waiver because of its receipt of Title I, Part A ARRA funds.

Provision waived: Section 1127(b) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Arkansas Department of Education
- California Department of Education
- District of Columbia Office of State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Illinois State Board of Education (applies to FY 2011 and 2012)
- Indiana Department of Education
- Iowa Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maine Department of Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Education
- Montana Office of Public Instruction
- Nebraska Department of Education
- Nevada Department of Education
- New Hampshire Department of Education: Merrimack School District
- New Hampshire Department of Education: Derry School District
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Department of Education
- North Dakota Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- Wisconsin Department of Public Education
- Wyoming Department of Education

VIII. Waivers Regarding Public School Choice

The Department granted an SEA a waiver to postpone notice of public school choice options beyond 14 days before the start of the school year to parents of eligible children attending schools that—

A. Were newly identified for improvement for the school year; or

B. Made AYP in the previous year, but did not exit improvement status.

Provisions waived: Section 1116(b)(1)(E)(i) of the ESEA and 34 CFR 200.37(b)(4)(iv).

Waiver Applicant:

- Wyoming Department of Education

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal**

Register. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: October 3, 2017.

Jason Botel,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2017–21621 Filed 10–5–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act of 1965, as Amended by the No Child Left Behind Act of 2001

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2012 under the waiver authority of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), including waivers related to flexibility granted to States in exchange for State-led reforms (ESEA flexibility).

The ESEA requires that the Department publish in the **Federal Register**, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during 2012.

FOR FURTHER INFORMATION CONTACT: Kia Weems, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W341, Washington, DC 20202. Telephone: (202) 260–2221 or by email: *Kia.Weems@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In 2012, the Department granted waivers through an initiative known as ESEA flexibility to 35 States from ten specific provisions of the ESEA in exchange for a rigorous and comprehensive State-developed plan designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction.[1] In addition to waiving the ten provisions, the Department granted three optional waivers under ESEA flexibility. The Department also granted 134 individual waivers under the waiver authority in section 9401 of the ESEA.

We granted:

(a) ESEA flexibility: The Department granted the following ten waivers to 35 SEAs under ESEA flexibility:

1. Flexibility Regarding the 2013–2014 Timeline for Determining Adequate Yearly Progress (AYP);

2. Flexibility in Implementation of School Improvement Requirements;

3. Flexibility in Implementation of Local Educational Agency (LEA) Improvement Requirements;

4. Flexibility for Rural LEAs;

5. Flexibility for Schoolwide Programs;

6. Flexibility to Support School Improvement;

7. Flexibility for Reward Schools;

8. Flexibility Regarding Highly Qualified Teacher (HQT) Improvement Plans;

9. Flexibility to Transfer Certain Funds; and

10. Flexibility to Use School Improvement Grant (SIG) Funds to Support Priority Schools.

In addition to waiving the ten provisions listed above, the Department granted three optional waivers under ESEA flexibility related to the following:

1. Granted waivers to 23 States under the Flexibility in the Use of Twenty-First Century Community Learning Centers (21st CCLC) Program Funds;

2. Granted waivers to 33 States under the Flexibility Regarding Making AYP Determinations; and

3. Granted waivers to 33 States under the Flexibility Regarding Within-District Title I Allocations;

(b) 73 waivers extending the period during which funds were available for obligation: 11 waivers extending the period for ESEA State-administered formula grant programs that received fiscal year (FY) 2009 funds under the regular appropriation; 14 waivers extending the period for ESEA State-administered formula grant programs that received FY 2009 funds under the American Recovery and Reinvestment Act (ARRA); one waiver under the Enhancing Education Through Technology (Ed-Tech) Program; one waiver under the Migrant Education Consortium Incentive Grant Program; two waivers under the Consolidated Grant funds for Insular Areas; 38 waivers for school improvement activities for certain fiscal years' funds; and six waivers extending the period for the Striving Readers Comprehensive Literacy Formula Grant Program funds;

(c) 21 waivers relating to school improvement requirements: Three waivers pertaining to school eligibility requirements and the definition of persistently lowest-achieving schools; and 18 waivers granting additional time to meet the teacher and principal evaluation requirement (11 for cohort 1 schools and seven for cohort 2 schools);

(d) 11 waivers of requirements related to State academic standards or assessments: Three waivers allowing substitution of standards or assessments; and eight waivers permitting use of annual measurable objectives (AMOs) to make AYP determinations based on assessments administered in the previous school year;

(e) One waiver of the five percent cap on Title I funds an LEA may reserve to provide financial incentives and rewards to teachers in schools identified for improvement, corrective action, or restructuring;

(f) Two schoolwide poverty threshold waivers permitting specific schools with less than 40 percent poverty the flexibility to operate a schoolwide program;

(g) Four waivers of the requirement to provide parents notice of public school choice options at least 14 days before the start of the school year;

(h) Two new waivers and one continuation allowing LEAs both to provide SES to eligible students attending schools in the first year of improvement that received funding under Title I, Part A and to count the costs of doing so toward meeting the LEAs' ''20 percent obligation'';

[1] Additional information regarding ESEA flexibility can be found at: *http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html.*

(i) Six waivers allowing SEAs or LEAs to approve LEAs or schools, respectively, identified as in need of improvement to become SES providers;

(j) Eight waivers allowing SEAs to waive the carryover limitation more than once every three years for their Title I, Part A allocation received under ARRA;

(k) One waiver of the third of three annual measureable achievement objectives (AMAO 3) under Title III allowing the State to use the same targets used to determine AYP for Title I in place of the State's AMAO 3; and

(l) Four waivers related to rural programs: Two waivers allowing SEAs to provide equitable services for private school students and teachers under the Rural and Low-Income School Program (RLIS) and two waivers allowing SEAs to meet the academic achievement assessment requirement in an alternative manner under RLIS.

Waiver Data

I. ESEA Flexibility Waivers

A. Flexibility Regarding the 2013–2014 Timeline for Determining AYP

The Department waived the requirements in section 1111(b)(2)(E)–(H) of the ESEA that prescribe how an SEA establishes AMOs for determining AYP to ensure that all students met or exceeded the State's proficient level of academic achievement on the State's assessments in reading/language arts and mathematics no later than the end of the 2013–2014 school year. Under this waiver, an SEA no longer needed to follow the statutory procedures for setting AMOs to use in determining AYP. Instead, an SEA had flexibility to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.

B. Flexibility in Implementation of School Improvement Requirements

The Department waived the requirements in section 1116(b) of the ESEA for an LEA to identify for improvement, corrective action, or restructuring, as appropriate, a Title I school that failed, for two consecutive years or more, to make AYP, and for a school so identified and its LEA to take certain improvement actions. Under this waiver, an LEA was no longer required to identify respective Title I schools for improvement, corrective action, or restructuring, and neither the LEA nor its schools were required to take statutorily required improvement actions, including providing public school choice and supplemental educational services (SES) to eligible students. An LEA was also exempt from administrative and reporting requirements related to school improvement.

C. Flexibility in Implementation of LEA Improvement

The Department waived the requirements in section 1116(c) of the ESEA for an SEA to identify for improvement or corrective action, as appropriate, an LEA that, for two consecutive years or more, failed to make AYP, and neither the LEA nor the SEA was required to take statutorily required improvement actions. An LEA was also exempt from associated administrative and reporting requirements related to LEA improvement.

D. Flexibility for Rural LEAs

The Department waived the requirements in sections 6213(b) and 6224(e) of the ESEA that limited participation in, and use of funds under, the Small, Rural School Achievement (SRSA) and RLIS programs based on whether an LEA made AYP and was complying with the requirements in section 1116 of the ESEA. Under the waiver, an LEA that received SRSA or RLIS funds had flexibility to use those funds for any authorized purpose regardless of the LEA's AYP status.

E. Flexibility for Schoolwide Programs

The Department waived the requirement in section 1114(a)(1) of the ESEA that a school have a poverty percentage of 40 percent or more in order to operate a schoolwide program. Under this waiver, an LEA had flexibility to operate a schoolwide program in a Title I school that did not meet the 40 percent poverty threshold if the SEA identified the school as a priority school or a focus school, and the LEA implemented interventions consistent with the turnaround principles or interventions that were based on the needs of the students in the school and designed to enhance the entire educational program in the school, as appropriate.

F. Flexibility To Support School Improvement

The Department waived the requirement in section 1003(a) of the ESEA for an SEA to distribute funds reserved under that section only to LEAs with schools identified for improvement, corrective action, or restructuring. Under this waiver, an SEA had flexibility to allocate ESEA section 1003(a) funds to an LEA in order to serve any priority or focus school, if the SEA determined such school was most in need of additional support.

G. Flexibility for Reward Schools

The Department waived the provision in section 1117(c)(2)(A) of the ESEA that authorized an SEA to reserve Title, Part A funds to reward a Title I school that (1) significantly closed the achievement gap between subgroups in the school; or (2) exceeded AYP for two or more consecutive years. Under this waiver, an SEA had flexibility to use funds reserved under section 1117(c)(2)(A) of the ESEA to provide financial rewards to any reward school, if the SEA determined such school was most appropriate to receive a financial reward.

H. Flexibility Regarding HQT Improvement Plans

The Department waived the requirements in section 2141(a) through (c) of the ESEA for an LEA and SEA to comply with certain requirements for improvement plans regarding highly qualified teachers. Under the waiver, an LEA that did not meet its HQT target did not have to develop an improvement plan under section 2141 of the ESEA and had flexibility in how it used its Title I and Title II funds. An SEA was exempt from the requirements regarding its role in the implementation of those plans, including the requirement that it enter into agreements with LEAs on the use of funds and the requirement that it provide technical assistance to LEAs on their plans. This flexibility allowed an SEA and LEA to focus on developing and implementing more meaningful evaluation and support systems.

I. Flexibility To Transfer Certain Funds

The Department waived the limitations in section 6123 of the ESEA that limited the amount of funds an SEA or LEA may transfer from certain ESEA programs to other ESEA programs. Under this waiver, an SEA and its LEAs had flexibility to transfer up to 100 percent of the funds received under the authorized programs among those programs and into Title I, Part A. Moreover, to minimize burden at the State and local levels, the SEA was not required to notify the Department, and its participating LEAs were not required to notify the SEA, prior to transferring funds.

J. Flexibility To Use SIG Funds To Support Priority Schools

The Department waived the requirements in section 1003(g)(4) of the ESEA and the definition of a Tier I

school in Section I.A.3 of the SIG final requirements. Under this waiver, an SEA had flexibility to award SIG funds available under section 1003(g) of the ESEA to an LEA to implement one of the four SIG models in any priority school.

The 35 applicants listed below were granted waivers under ESEA flexibility:

- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Connecticut State Department of Education
- Delaware Department of Education
- District of Columbia Office of the State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education
- Idaho State Department of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Nevada Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- Wisconsin Department of Public Instruction

K. Waivers Regarding Flexibility in the Use of 21st CCLC Program Funds

The Department waived requirements in sections 4201(b)(1)(A) and 4204(b)(2)(A) of the ESEA that restricted the activities provided by a community learning center under the 21st CCLC program to activities provided only during non-school hours or periods when school was not in session (*i.e.,* before and after school or during summer recess). Under this waiver, an SEA had flexibility to permit community learning centers to use 21st CCLC funds to support expanded learning time during the school day in addition to activities during non-school hours or periods when school was not in session.

23 Waiver applicants:

- Colorado Department of Education
- Connecticut State Department of Education
- Delaware Department of Education
- Florida Department of Education
- Idaho State Department of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- New Jersey Department of Education
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction

L. Waivers Granting Flexibility Regarding Making AYP Determinations

The Department waived the requirements in section 1116(a)(1)(A)–(B) and (c)(1)(A) of the ESEA that required LEAs and SEAs to make determinations of AYP for schools and LEAs, respectively. Under this waiver, an SEA and its LEAs were no longer required to make AYP determinations for LEAs and schools, respectively. Instead, an SEA and its LEAs had to report on their report cards performance against the AMOs for all subgroups identified in section 1111(b)(2)(C)(v) of the ESEA, and use performance against the AMOs to support continuous improvement in Title I schools.

33 Waiver applicants:

- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Connecticut State Department of Education
- District of Columbia Office of the State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education
- Idaho State Department of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Michigan Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Nevada Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- Wisconsin Department of Public Instruction

M. Waivers Granting Flexibility Regarding Within-District Title I Allocations

The Department waived the requirements in section 1113(a)(3)–(4) of the ESEA that required an LEA to serve eligible schools under Title I in rank order of poverty and to allocate Title I, Part A funds based on that rank ordering. Under this waiver, an LEA had flexibility to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school did not rank sufficiently high to be served based solely on the school's poverty rate.

33 Waiver applicants:

- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Connecticut State Department of Education
- Delaware Department of Education
- District of Columbia Office of the State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education

- Idaho State Department of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Nevada Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- Wisconsin Department of Public Instruction

II. Extensions of the Obligation Period

A. Waivers Granted for ESEA State-Administered Formula Grant Programs That Received FY 2009 Funds Under the Department's Regular Appropriation Act

Extended until September 30, 2012, the period of availability of funds under certain grant programs.

Provision waived: Section 421(b) of the General Education Provisions Act (GEPA).

11 Waiver applicants and affected programs:

- Delaware Department of Education, Title I, Part A (Grants to LEAs), Title I, Part B, Subpart 3 (Even Start), Title II, Part A (Improving Teacher Quality State Grants), Title II, Part B, Sections 2201–2203 (Math Science Partnerships), Title II, Part D (Ed-Tech), Title III, Part A (English Language State Grants), Title IV, Part A (Safe and Drug Free Schools and Community Grants), Title IV, Part B (21st Century Community Learning Centers), and Title VI, Part A, Subpart I, Section 6111 (State Assessment Grants)
- Georgia Department of Education, Title II, Part B, Sections 2201–2203 (Math Science Partnerships), Title II, Part D (Ed-Tech), and Title IV, Part A (Safe and Drug Free Schools and Community Grants)
- Guam Department of Education, Title I, Part A, Subpart 2, Section 1121(b)–(c) (Grants to the Outlying Areas)
- Idaho State Department of Education, Title IV, Part A (Safe and Drug Free Schools and Community Grants)
- Illinois State Board of Education, Title I, Part A (Grants to LEAs), Title II, Part A (Improving Teacher Quality State Grants), Title II, Part B, Sections 2201–2203 (Math Science Partnerships), Title II, Part D (Ed-Tech), Title IV, Part A (Safe and Drug Free Schools and Community Grants), and Title IV, Part B (21st Century Community Learning Centers)
- Massachusetts Department of Elementary and Secondary Education, Title I, Part A (Grants to LEAs), Title I, Part B, Subpart 3 (Even Start), Title I, Part D (Neglected and Delinquent Program), Title II, Part A (Improving Teacher Quality State Grants), Title II, Part B, Sections 2201–2203 (Math Science Partnerships), Title II, Part D (Ed-Tech), Title III, Part A (English Language State Grants), Title IV, Part A (Safe and Drug Free Schools and Community Grants), Title IV, Part B (21st Century Community Learning Centers), and Title VI, Part A, Subpart I, Section 6111 (State Assessment Grants)
- New York State Education Department, Title I, Part A (Grants to LEAs), Title II, Part A (Improving Teacher Quality State Grants), Title II, Part D (Ed-Tech), Title III, Part A (English Language State Grants), and Title IV, Part A (Safe and Drug Free Schools and Community Grants)
- North Carolina Department of Public Instruction, Title II, Part D (Ed-Tech)
- Ohio Department of Education, Title I, Part B, Subpart 3 (Even Start), Title I, Part C (Migrant Education State Grants), Title I, Part D (State Agency Neglected and Delinquent Program), Title II, Part B, Sections 2201–2203 (Math Science Partnerships), Title II, Part D (Ed-Tech), and Title IV, Part A (Safe and Drug Free Schools and Community Grants)
- Virgin Islands Department of Education, Title I, Part A, Subpart 2, Section 1121(b)–(c) (Grants to the Outlying Areas)
- West Virginia Department of Education, Title I, Part A (Grants to LEAs), Title I, Part B, Subpart 3 (Even Start), Title I, Part C (Migrant Education State Grants), Title II, Part A (Improving Teacher Quality State Grants), Title II, Part B, Sections 2201–2203 (Math Science Partnerships), Title II, Part D (Ed-Tech), Title III, Part A (English Language State Grants), and Title IV, Part A (Safe and Drug Free Schools and Community Grants)

B. Waivers Granted for ESEA State-Administered Formula Grant Programs That Received FY 2009 Funds Under the ARRA

Extended until September 30, 2012, the period of availability of funds under certain grant programs.

Provision waived: Section 421(b) of GEPA.

14 Waiver applicants and affected programs:

- American Samoa Department of Education, Title I, Part A, Subpart 2, Section 1121(b)–(c) (Grants to the Outlying Areas)
- Arizona Department of Education, Title II, Part D (Ed-Tech)
- Bureau of Indian Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- Delaware Department of Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- Georgia Department of Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- Guam Department of Education, Title I, Part A, Subpart 2, Section 1121(b)–(c) (Grants to the Outlying Areas)
- Idaho State Department of Education, Title I, Part A (Grants to LEAs)
- Illinois State Board of Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- Massachusetts Department of Elementary and Secondary Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- New York State Education Department, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- North Carolina Department of Public Instruction, Title II, Part D (Ed-Tech)
- Ohio Department of Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)
- Virgin Islands Department of Education, Title I, Part A, Subpart 2, Section 1121(b)–(c) (Grants to the Outlying Areas)
- West Virginia Department of Education, Title I, Part A (Grants to LEAs), and Title II, Part D (Ed-Tech)

C. Waivers for the Enhancing Education Through Technology Program

Extended until September 30, 2013, the period of availability of FY 2010 (non-ARRA) funds awarded under the Title II, Part D (Ed-Tech) grant program.

Provision waived: Section 421(b) of GEPA.

One Waiver applicant:

- Idaho State Department of Education

D. Waivers for the Migrant Education Consortium Incentive Grant Program

Extended until September 30, 2012, the period of availability of FY 2009 funds awarded under the Title I, Part C (Migrant Education Consortium Incentive Grant) grant program.

Provision waived: Section 421(b) of GEPA.

One Waiver applicant:

- North Carolina Department of Public Instruction

E. Waivers of Consolidated Grant Funds for Insular Areas

Extended until September 30, 2014, the period of availability of FY 2012 funds awarded under Title I, Part A, Subpart 2, Section 1121(b) and (c) (Grants to the Outlying Areas)

Provision waived: Section 421(b) of GEPA.

Two Waiver applicants:

- Commonwealth of the Northern Mariana Islands Public School System
- Virgin Islands Department of Education

F. Waivers of the School Improvement Requirements for Certain Fiscal Years' Funds

Extended the period of availability of FY 2009 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Section 421(b) of GEPA.

One Waiver applicant:

- Delaware Department of Education

Extended the period of availability of FY 2010 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Section 421(b) of GEPA.

24 Waiver applicants:

- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Delaware Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Michigan Department of Education
- Minnesota Department of Education
- Nevada Department of Education
- New Jersey Department of Education
- New York State Education Department
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Puerto Rico Department of Education
- South Carolina Department of Education
- Tennessee Department of Education
- Wyoming Department of Education

Extended the period of availability of FY 2011 SIG funds awarded under section 1003(g) of the ESEA.

Provision waived: Section 421(b) of GEPA.

13 Waiver applicants:

- Alabama Department of Education
- Arkansas Department of Education
- California Department of Education
- Colorado Department of Education
- Delaware Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Louisiana Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Missouri Department of Elementary and Secondary Education
- Nebraska Department of Education
- Nevada Department of Education
- Rhode Island Department of Education

G. Waivers for the Striving Readers Comprehensive Literacy Formula Grant Program

Extended the period of availability of FY 2010 funds awarded under Title I, Part E, Section 1502 of the ESEA.

Provision waived: Section 421(b) of GEPA.

Six Waiver applicants:

- Idaho State Department of Education
- Louisiana Department of Education
- Maine Department of Education
- Missouri Department of Elementary and Secondary Education
- Nebraska Department of Education
- Wisconsin Department of Public Instruction

III. Waivers of SIG Requirements

A. Waivers of School Eligibility Requirements and Definition of Persistently Lowest-Achieving Schools

Waived the school eligibility requirements to enable a State to replace its list of Tier I, Tier II, and Tier III schools with its list of priority schools and to replace the definition of ''persistently lowest-achieving schools'' with the State's definition of ''priority schools.''

Provisions waived: Sections I.A.1 and I.A.3 of the SIG final requirements (75 FR 66363).

Three Waiver applicants:

- Minnesota Department of Education
- Oklahoma State Department of Education
- Tennessee Department of Education

B. Waivers Granting Additional Time To Meet Teacher and Principal Evaluation Requirements (Cohorts 1 and 2 Schools)

Allowed SEAs to permit an LEA that was implementing during the 2010–2011 school year a transformation model with SIG funds, which required development and implementation of high-quality evaluation systems, to have additional time to meet the teacher and principal evaluation requirements in schools that were not able to do so that year.

Provision waived: Section I.A.2(d)(1)(i)(B) of the SIG final requirements (75 FR 66363).

18 Waiver applicants:

a. *Cohort 1 Schools:*

- Alabama Department of Education
- California Department of Education
- Hawaii State Department of Education
- Illinois State Board of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- New Jersey Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Vermont Agency of Education

b. *Cohort 2 Schools:*

- Illinois State Board of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- New Jersey Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency

IV. Waivers of Related to State Academic Standards and Assessments

A. Waivers Regarding Standards and Assessments

Allowed the Kansas State Department of Education to permit McPherson Unified School District (MUSD), Kansas City, Kansas Public Schools (KCKPS), and the Clifton-Clyde Unified School District (Clifton-Clyde) to—

(1) Administer the ACT in grade 12 and the EXPLORE in grade 8 in lieu of the Kansas State assessments; and

(2) Use the results of those assessments for accountability purposes.

Provisions waived: Section 1111(b)(1)(B), (b)(3)(A), (b)(3)(C)(i), and (b)(3)(C)(ii) of the ESEA, and 34 CFR 200.1(a)(1) and 200.2(b)(1) and (b)(3)(i).

One Waiver applicant:

- Kansas State Department of Education

Allowed Kansas to—

(1) Administer only the Algebra I end-of-course (EOC) assessment to any middle school student who took that

course and to use those results in middle school accountability determinations rather than results from the 7th or 8th grade general mathematics assessment;

(2) Administer the Geometry EOC assessment to any 8th grade student who took Algebra I in 7th grade and Geometry in 8th grade and to use the results of that assessment in middle school accountability determinations; and

(3) Assess students who took Algebra I or Geometry in middle school with the Algebra II EOC assessment in high school and use those results for high school accountability purposes.

Provisions waived: Section 1111(b)(1)(B) and (b)(3)(C)(i) of the ESEA, and 34 CFR 200.1(a)(1).

One Waiver applicant:

- Tennessee Department of Education

Allowed Tennessee to—

(1) Use, with respect to a student who was not yet enrolled in high school but who took Algebra I or English II and the corresponding EOC assessment, the student's score on that assessment for accountability purposes for the grade in which the student was enrolled; and

(2) Use EOC assessments for Algebra II and English III for high school accountability purposes for those students who take Algebra I or English II, respectively, prior to entering high school.

Provisions waived: Section 1111(b)(1)(B) and (b)(3)(C)(i) of the ESEA.

B. Waivers Permitting the Use of AMOs To Make AYP Determinations Based on Assessments Administered the Previous Year

Permitted SEAs to use the same AMOs to make AYP determinations based on assessments administered in the 2011–2012 school year that were used to make such determinations based on assessments administered in the 2010–2011 school year.

Provision waived: Section 1111(b)(2)(H) of the ESEA.

Eight Waiver applicants:

- Alabama Department of Education
- Alaska Department of Education and Early Development
- Idaho State Department of Education
- Illinois State Board of Education
- Iowa Department of Education
- Kansas State Department of Education
- Maine Department of Education
- West Virginia Department of Education

V. Waiver of the Five Percent Cap on Title I Funds an LEA May Reserve To Provide Financial Incentives and Rewards to Teachers in Schools Identified for Improvement, Corrective Action, or Restructuring

Permitted the Hillsborough County Public Schools (Florida) to reserve up to 6.6 percent of its FY 2012 Title I allocation for rewards and incentives in the 43 schools identified by the LEA.

Provision waived: Section 1113(c)(4) of the ESEA.

One Waiver applicant:

- Hillsborough County Public Schools (Florida)

VI. Schoolwide Poverty Threshold Waivers Allowing Flexibility for Schoolwide Programs in Title I Schools

Permitted Dunn School and Memorial School in Maine's Regional School Unit/Maine School Administrative District #15 (MSAD #15) to become Title I, Part A schoolwide program schools with percentages of low-income students of less than 40 percent.

Provision waived: Section 1114(a)(1) of the ESEA.

One Waiver applicant:

- MSAD #15

Permitted Piedmont Valley Elementary (Piedmont) in South Dakota to be eligible to operate a schoolwide program with less than 40 percent of students being from low-income families.

Provision waived: Section 1114(a)(1) of the ESEA.

One Waiver applicant:

- Meade School District 46–1

VII. Waivers Regarding Public School Choice Notice

Allowed SEAs to provide notice of public school choice options less than 14 days before the start of the school year to parents of eligible children attending schools that were newly identified for improvement for the 2011–2012 school year or made AYP in the previous year, but did not exit improvement status.

Provisions waived: Section 1116(b)(1)(E)(i) of the ESEA and 34 CFR 200.37(b)(4)(iv).

Four Waiver applicants:

- Minnesota Department of Education
- Nebraska Department of Education
- Oklahoma State Department of Education
- Wyoming Department of Education

VIII. Waivers Allowing LEAs To Provide SES, in Addition to Public School Choice, to Eligible Students in Title I Schools in the First Year of School Improvement and To Count the Costs of Both Toward Meeting the LEAs' ''20 Percent Obligation''

New Applicants:

1. *Waiver applicant:* Wyoming Department of Education

- *Provisions waived:* Section 1116(b)(10) of the ESEA and 34 CFR 200.48.
- *Description of waiver:* For the 2010–2011 and 2011–2012 school year, permitted an LEA in Wyoming to offer SES, in addition to public school choice, to eligible students in a Title I school in the first year of school improvement and to count the costs of providing SES to these students toward meeting the LEA's ''20 percent obligation.''

Continuation Applicant:

1. *Waiver applicant:* Alabama Department of Education

- *Provisions waived:* Section 1116(b)(10) of the ESEA and 34 CFR 200.48.
- *Description of waiver:* For the 2012–2013 school year, permitted LEAs in Alabama to offer SES, in addition to public school choice, to eligible students in Title I schools in the first year of improvement and to count the costs of providing SES to these students toward meeting the LEA's ''20 percent obligation.''

IX. Waivers Allowing SEAs or LEAs To Approve Schools or LEAs in Need of Improvement To Become SES Providers

1. *Waiver applicant:* California Department of Education

- *Provisions waived:* 34 CFR 200.47(b)(1)(iv)(A) and (B).
- *Description of waiver:* Permitted California to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as a provider of SES during the 2012–2013 and 2013–2014 school year.

2. *Waiver applicant:* Montana Office of Public Instruction

- *Provisions waived:* 34 CFR 200.47(b)(1)(iv)(A) and (B).
- *Description of waiver:* Permitted Montana to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as a provider of SES during the 2012–2013 school year.

3. *Waiver applicant:* Nebraska Department of Education

- *Provisions waived:* 34 CFR 200.47(b)(1)(iv)(A) and (B).
- *Description of waiver:* Permitted Nebraska to approve a school or LEA

identified for improvement, corrective action, or restructuring to serve as a provider of SES during the 2011–2012 school year.

4. *Waiver applicant:* Wyoming Department of Education

• *Provisions waived:* 34 CFR 200.47(b)(1)(iv)(A) and (B).

• *Description of waiver:* Permitted Wyoming to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as a provider of SES for the 2010–2011 and 2011–2012 school years.

X. Authorizing an SEA To Waive the Carryover Limitation for an LEA Because of Its Receipt of Title I, Part A ARRA Funds

Waiver to permit an SEA to waive the carryover limitation more than once within three years for an LEA that needs the additional waiver because of its receipt of Title I, Part A ARRA funds.

Provision waived: Section 1127(b) of the ESEA.

Eight Waiver applicants:

- Maine Department of Education
- Michigan Department of Education
- Montana Office of Public Instruction
- Nebraska Department of Education
- Nevada Department of Education
- Ohio Department of Education
- Oklahoma State Department of Education
- South Carolina Department of Education

XI. Waiver of AYP Requirement for Annual Measurable Achievement Objectives (AMAOs)

1. *Waiver applicant:* Colorado Department of Education

• *Provision waived:* Section 3122(a)(3)(A)(iii) of the ESEA.

• *Description of waiver:* Granted a two-year waiver so that Colorado may use, for purposes of AMAO 3, the same targets used in the growth component of its State-developed differentiated recognition, accountability, and support system in reading, writing, and mathematics, in place of the State's AMOs.

XII. Waivers Related to Rural Programs

A. Waivers Allowing SEAs To Provide Equitable Services for Private School Students and Teachers Under the RLIS

Provision waived: Section 6222 of the ESEA.

Two Waiver applicants:

- Commonwealth of the Northern Mariana Islands Public School System
- Virgin Islands Department of Education

B. Waivers Allowing SEAs To Meet the Academic Achievement Assessment Requirement in an Alternative Manner Under RLIS

Provision waived: Section 6224(d) of the ESEA.

Two Waiver applicants:

- Commonwealth of the Northern Mariana Islands Public School System
- Virgin Islands Department of Education

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: October 3, 2017.

Jason Botel,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2017–21623 Filed 10–5–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 8401 of the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2016 under the waiver authority in section 8401 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act.[1]

The ESEA requires that the Department publish in the **Federal Register**, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during each calendar year.

FOR FURTHER INFORMATION CONTACT: Kia Weems, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W341, Washington, DC 20202. Telephone: (202) 260–2221 or by email: *Kia.Weems@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In 2016, the Department granted a total of 111 waivers to States under the waiver authority in section 8401 of the ESEA, as amended by the ESSA. We granted:

(a) *73 waivers extending the period in which funds were available for obligation:* 66 waivers for school improvement activities, one waiver for Improving Teacher Quality, one waiver for Migrant Education, three waivers for 21st Century Community Learning Centers (21st CCLC), and two waivers for Mathematics and Science Partnerships;

(b) *32 waivers of requirements related to State academic standards or assessments:* Six waivers allowing substitution of standards or assessments and six waivers permitting SEAs or LEAs to refrain from reporting assessment or accountability determinations; and 26 waivers of the requirement that a State's assessment

[1] On December 10, 2015, the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), was signed into law. The ESEA waiver provisions in section 8401 of the ESEA, as amended by the ESSA, went into effect on that date. However, the Department awarded and administered FY 2016 formula grant funds in accordance with the ESEA as in effect on the day before the date of enactment of the ESSA (*i.e.,* the requirements promulgated under the No Child Left Behind Act of 2001 (NCLB)) consistent with clarification from Congress in the Consolidated Appropriations Act, 2016. Accordingly, unless otherwise noted, all references to the ESEA in this notice refer to the ESEA, as amended by NCLB.

system cover the full range of its academic content standards for speaking and listening;

(c) One waiver permitting an LEA to serve a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school;

(d) One waiver permitting local educational agencies (LEAs) to operate a Title I schoolwide program in a priority school or a focus school that has less than 40 percent poverty and is implementing a schoolwide intervention; and

(e) Four waivers allowing an SEA to waive the carryover limitation for an LEA that needs an additional waiver beyond what the SEA is authorized to grant.

Waiver Data

I. Extensions of the Obligation Period

A. Sixty-six waivers to extend the period of availability of School Improvement Grant (SIG) funds.

1. Extended the period of availability of fiscal year (FY) 2011 SIG funds awarded to two States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of the General Education Provisions Act (GEPA) (20 U.S.C. 1225(b)).

Waiver Applicants:

- New York State Education Department
- Wisconsin Department of Education

2. Extended the period of availability of FY 2012 SIG funds awarded to three States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Missouri Department of Elementary and Secondary Education
- New Jersey Department of Education
- Texas Education Agency

3. Extended the period of availability of FY 2013 SIG funds awarded to seven States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Iowa Department of Education
- Missouri Department of Elementary and Secondary Education
- Oregon Department of Education
- Puerto Rico Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Wisconsin Department of Education

4. Extended the period of availability of FY 2014 SIG funds awarded to eight States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Alabama State Department of Education
- Arizona Department of Education
- Georgia Department of Education
- Iowa Department of Education
- Kansas State Department of Education
- New Hampshire Department of Education
- North Dakota Department of Public Instruction
- Puerto Rico Department of Education

5. Extended the period of availability of FY 2016 SIG funds awarded to 46 States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Arkansas Department of Education
- California Department of Education
- Colorado Department of Education
- Connecticut State Department of Education
- District of Columbia Office of the State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Iowa Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
- Louisiana Department of Education
- Maine Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Montana Office of Public Instruction
- Nebraska Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- North Dakota Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- Wisconsin Department of Education

B. One waiver to extend the period of availability of funds for Improving Teacher Quality awarded under Title II, Part A of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- New York State Department of Education

C. One waiver to extend the period of availability of funds for Migrant Education related activities awarded under section Title I, Part C of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- New York State Department of Education

D. Three waivers extending the period of availability of funds for the 21st CCLC program under Title IV, Part B of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

1. Extended the period of availability of FY 2012 funds reserved under Title IV, Part B of the ESEA made available for the 21st CCLC program.

Waiver Applicant:

- North Dakota Department of Public Instruction

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

2. Extended the period of availability of FY 2013 funds reserved under Title IV, Part B of the ESEA made available for the 21st CCLC program.

Waiver Applicants:

- Hawaii State Department of Education
- Maryland State Department of Education

F. Two waivers to extend the period of availability of Mathematics and Science Partnerships funds.

1. Extended the period of availability of FY 2012 funds awarded to one State under Title II, Part B of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- Illinois State Board of Education

2. Extended the period of availability of FY 2013 funds awarded to one State under Title II, Part B of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- Illinois State Board of Education

III. Waivers of Requirements Related to State Academic Standards and Assessments

A. One waiver allowing substitution of standards or assessments.

Provisions waived: Section 1111(b)(1)(B) and (3)(C)(i) of the ESEA.

Waiver Applicant:

- Hawaii State Department of Education

Description of Waiver: One-year waiver for the 2015–2016 school year of the statutory and regulatory requirements under Title I, Part A of the ESEA, which require the State to apply the same academic achievement standards, and to use the same academic assessments, for all public school children in the State.

B. Three waivers of the requirement for an SEA to administer high-quality student academic assessments.

Provisions waived: Section 1111(b)(3)(A), (b)(3)(C)(vii), and (b)(3)(C)(ix)(I) of the ESEA.

Waiver Applicants:

- Alaska Department of Education and Early Development
- Montana Office of Public Instruction
- Nevada Department of Education

Description of Waiver: Waiver of the requirement that the SEA administer on an annual basis a set of high-quality student academic assessments in reading/language arts and mathematics to all students in grades three to eight and once in high school.

C. One waiver of reporting requirements related to standards and assessments.

Provisions waived: Section 1111(h)(1)(C)(i), (1)(C)(iii)–(iv), and (2)(B) of the ESEA.

Waiver Applicant:

- Alaska Department of Education and Early Development

Description of Waiver: Waiver for the 2015–2016 school year of the SEA and LEA reporting requirements in the ESEA corresponding to the waived assessment requirements.

D. Twenty-six waivers allowing States to have assessments that did not asses all content standards.

Provision waived: Section 1111(b)(3)(C)(ii) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arkansas Department of Education
- California Department of Education
- Georgia Department of Education
- Idaho State Board of Education
- Iowa Department of Education
- Indiana Department of Education
- Kentucky Department of Education
- Kansas State Department of Education
- Louisiana Department of Education
- Maine Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Missouri Department of Elementary and Secondary Education
- Montana Office of Public Instruction
- Nevada Department of Education
- New York State Department of Education
- North Dakota Department of Public Instruction
- Puerto Rico Department of Education
- South Carolina Department of Education
- Texas Education Agency
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- Wisconsin Department of Education
- Wyoming Department Education

Description of Waiver: Waiver from the requirement that the State's assessment system measure the State's speaking and listening standards.

IV. Within-District Allocations

One waiver granting flexibility regarding within-district Title I allocations.

Waiver Applicant:

- New York State Department of Education

Description of Waiver: Permitted an LEA to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school does not rank sufficiently high to be served based solely on the school's poverty rate.

Provisions waived: Section 1113(a)(4)(B) and (c)(1) of the ESEA.

V. School-Wide Poverty Threshold

One waiver allowing a Title I schoolwide program in a school below the 40 percent poverty threshold.

Provision waived: Section 1114(a)(1) of the ESEA.

Waiver Applicant:

- Missouri Department of Elementary and Secondary Education

Description of Waiver: Waiver permitting LEAs to operate a schoolwide program in a priority school or a focus school that does not meet the schoolwide poverty threshold of 40 percent and is implementing a schoolwide intervention.

VI. Authorizing an SEA To Waive the Carryover Limitation

A. Four waivers authorizing SEAs to waive the carryover limitation for an LEA more than once every three years.

Provision waived: Section 1127(b) of the ESEA.

Waiver Applicant:

- Indiana Department of Education

Description of Waiver: One-year waiver to allow Indiana to grant the Indianapolis Public Schools, Edison Learning—Roosevelt College and Career Academy, and Dr. Robert H. Faulkner Academy a waiver of the carryover limitation with respect to the FY 2015 Title I, Part A funds even if the LEA received a carryover waiver of either its FY 2013 or FY 2014 Title I, Part A funds from the State.

Waiver Applicant:

- Michigan Department of Education

Description of Waiver: One-year waiver allowed Michigan to grant the School District of the City of Pontiac and Saginaw City School District a waiver of the carryover limitation with respect to FY 2014 Title I, Part A funds even if the LEA received a carryover waiver of either its FY 2012 or FY 2013 Title I, Part A funds from the State.

Waiver Applicant:

- Washington Office of the Superintendent of Public Instruction

Description of Waiver: One-year waiver allowed Washington to grant not more than 90 LEAs a waiver of the carryover limitation with respect to unexpended FY 2015 Title I, Part A funds even if an LEA received a carryover waiver of either its FY 2013 or FY 2014 Title I, Part A funds from the State.

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Dated: October 3, 2017.

Jason Botel,

Acting Assistant Secretary for Elementary and Secondary Education.

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BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act of 1965, as Amended

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2015 under the waiver authority in section 9401 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), including waivers related to flexibilities granted to States in exchange for State-led reforms (ESEA flexibility).

The ESEA requires that the Department publish in the **Federal Register**, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during each calendar year.

FOR FURTHER INFORMATION CONTACT: Kia Weems, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W341, Washington, DC 20202. Telephone: (202) 260–2221 or by email: *Kia.Weems@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In 2015, the Department granted waivers under ESEA flexibility to 43 States under the waiver authority in section 9401 of the ESEA, in exchange for rigorous and comprehensive State-developed plans designed to improve student academic achievement and increase the quality of instruction. An additional 93 waivers that were not part of ESEA flexibility also were granted under the waiver authority in section 9401 of the ESEA. We granted:

a. Ten waivers under ESEA flexibility to each of 43 States granting flexibility from ESEA requirements to improve student academic achievement and increase the quality of instruction:

1. Allowing SEAs flexibility to select one of three options for setting new ambitious, but achievable annual measurable objectives (AMOs);

2. Allowing flexibility in implementation of school improvement requirements to relieve local educational agencies (LEAs) of the requirement to identify schools for improvement, corrective action, or restructuring, as appropriate, and to take certain improvement actions in identified schools;

3. Allowing flexibility in implementation of LEA improvement requirements to relieve SEAs of the requirement to identify LEAs for improvement or corrective action, as appropriate, and to take certain improvement actions for identified LEAs;

4. Granting flexibility for rural LEAs;

5. Permitting LEAs to operate a schoolwide program in a priority school or a focus school that does not meet the 40 percent poverty threshold and is implementing a schoolwide intervention;

6. Allowing SEAs flexibility to distribute school improvement funds to LEAs for use in priority and focus schools;

7. Allowing funds reserved for State awards program to go to any reward school;

8. Relating to highly qualified teacher (HQT) improvement plan requirements;

9. Relating to limitations on the transferability of certain funds; and

10. Permitting SEAs flexibility to award School Improvement Grant (SIG) funds to an LEA to implement one of the four SIG models in any priority school.

In addition to waiving the 10 provisions listed above, the Department granted three optional waivers to 43 States under ESEA flexibility related to the following:

1. 21st Century Community Learning Centers (21st CCLC) requirements, allowing SEAs flexibility to permit community learning centers to use 21st CCLC funds to support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session;

2. Requirements to make adequate yearly progress (AYP) determinations; and

3. Requirements pertaining to Title I, Part A within-district allocations;

b. Forty-five waivers extending the period in which funds were available for obligation: 40 waivers for school improvement activities, one waiver for Consolidated Grant funds for Insular Areas, one waiver for State assessment activities, and three waivers extending the period for SIG carryover funds;

c. One waiver granting LEAs additional time to meet teacher and principal evaluation requirements for cohort 5 SIG schools;

d. Five waivers allowing SEAs to approve schools or LEAs identified as in need of improvement to become supplemental educational services (SES) providers;

e. Ten waivers of requirements pertaining to State academic standards or assessments: Four waivers allowing substitution of standards or assessments and six waivers exempting SEAs or LEAs from reporting assessment or accountability determinations;

f. Fourteen waivers of the third of three annual measureable achievement objectives (AMAOs 3) under Title III, due to lack of assessment data in the 2014–2015 school year;

g. Two waivers allowing SEAs flexibility to distribute section 1003(a) funds to LEAs for use in priority and focus schools;

h. Five waivers of the requirement to make AYP determinations;

i. Six waivers allowing LEAs to carry out significant education reforms to improve student achievement;

j. Two waivers authorizing an SEA to waive the carryover limitation for an LEA that needs an additional waiver;

k. One waiver of the requirement to provide parents notice of public school choice options at least 14 days before the start of the school year;

l. One waiver pertaining to school support and recognition allowing flexibility in the use of funds reserved for State awards program to go to any reward school; and

m. One waiver enabling LEAs to use the term ''highly qualified teacher'' to refer to a teacher who received a summative rating of ''effective,'' ''highly effective,'' or ''exemplary'' and earned at least 50 percent of the possible student achievement measures in the State's teacher evaluation and support system.

Waiver Data

I. ESEA Flexibility Renewals To Continue To Improve Student Academic Achievement and Increase the Quality of Instruction

A. Flexibility Regarding the 2013–14 Timeline for Setting AMOs

Allowed SEAs flexibility to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals that will be used to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.

Provisions waived: Section 1111(b)(2)(E) through (H) of the ESEA.

B. Flexibility in Implementation of School Improvement Requirements

1. Granted flexibility relating to the requirement for LEAs to identify schools for improvement, corrective action, or restructuring and corresponding requirements. Section 1116(b)(13), which requires LEAs to permit a child who has transferred to remain in the choice school through the highest grade in the school, was not waived.

Provision waived: Section 1116(b) of the ESEA (except (b)(13)).

2. Waivers granting flexibility of the requirement for SEAs and LEAs to take a variety of actions to offer SES to eligible students in schools identified for improvement, corrective action, or restructuring.

Provision waived: Section 1116(e) of the ESEA.

C. Flexibility in Implementation of LEA Improvement Requirements

Granted flexibility with respect to the requirement that SEAs identify LEAs for improvement and corrective action and take certain action in those LEAs.

Provisions waived: Section 1116(c)(3) and (5)–(11) of the ESEA.

D. Flexibility for Rural LEAs

1. Allowed flexibility to use Small, Rural School Achievement Program (SRSA) funds regardless of the AYP status of the LEA so that LEAs receiving SRSA funds that fail to make AYP may continue to use these funds.

Provision waived: Section 6213(b) of the ESEA.

2. Allowed SEAs flexibility to permit an LEA to continue to receive a Rural and Low-Income School program (RLIS) grant even if the LEA fails to make AYP.

Provision waived: Section 6224(e) of the ESEA.

E. Flexibility for Schoolwide Programs

Waivers permitted LEAs to operate a schoolwide program in a priority school or a focus school that does not meet the schoolwide poverty threshold of 40 percent and is implementing a schoolwide intervention.

Provision waived: Section 1114(a)(1) of the ESEA.

F. Flexibility To Support School Improvement

Waivers regarding the State-level reservations to support school improvement, allowing SEAs flexibility to distribute reserved funds to LEAs for use in priority and focus schools. The required reservation was not waived; the waiver merely permitted an SEA to distribute the funds to schools that were not identified for improvement, corrective action, or restructuring.

Provision waived: Section 1003(a) of the ESEA.

G. Flexibility in the Use of Funds Reserved for State Award Programs

Allowed funds reserved for State awards programs to go to any reward school.

Provision waived: Section 1117(b)(1)(B) of the ESEA.

H. Waivers Regarding HQT Improvement Plans

Waived the requirements regarding HQT improvement plans and related technical assistance and provided flexibility with respect to the use of Title I, Part A funds for paraprofessionals.

Provisions waived: Section 2141(a)–(c) of the ESEA.

I. Flexibility To Transfer Certain Funds

1. Permitted the SEA to transfer up to 100 percent of the amount from a covered program into another covered program or into Title I, Part A.

Provision waived: Section 6123(a) of the ESEA.

2. Permitted LEAs flexibility in percentage limitations as well as in the use of transferred funds.

Provision waived: Section 6123(b)(1) of the ESEA.

3. Waivers of the requirements relating to modification of plans and notice of transfer.

Provision waived: Section 6123(d) of the ESEA.

4. Permitted LEAs flexibility to exclude funds transferred into Title I, Part A from the base in calculating any set-aside percentages.

Provision waived: Section 6123(e)(1) of the ESEA.

J. Flexibility To Use SIG Funds To Support Priority Schools

Permitted SEAs to award SIG funds to an LEA to implement one of the four SIG models (Turnaround, Restart, Closure, Transformation) in any priority school.

Provisions waived: Section 1003(g)(4) of the ESEA and section I.A.3 of the notice of final requirements for SIG Grants, published in the **Federal Register** on October 28, 2010 (74 FR 65618).

K. Flexibility in the Use of 21st CCLC Program Funds

Permitted an eligible entity that received funds under the 21st CCLC program to use those funds to support expanded learning time during the school day, week, or year in addition to activities during non-school hours or periods when school is not in session.

Provisions waived: Sections 4201(b)(1)(A) and 4204(b)(2)(A) of the ESEA.

L. Flexibility Regarding Making AYP Determinations

Waived the requirements to make AYP determinations. Instead, an SEA and its LEAs would report on their report cards performance against the AMOs for all subgroups identified in section 1111(b)(2)(C)(v) of the ESEA, and would use performance against the AMOs to support continuous improvement in Title I schools.

Provisions waived: Section 1116(a)(1)(A)–(B) and (c)(1)(A) of the ESEA.

M. Flexibility Regarding Within-District Title I Allocations

Permitted an LEA to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school did not rank sufficiently high to be served based solely on the school's poverty rate.

Provisions waived: Section 1113(a)(3)–(4) and (c)(1) of the ESEA.

Waiver Applicants:

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Arkansas Department of Education
- Colorado Department of Education
- Connecticut State Department of Education
- Delaware Department of Education
- District of Columbia Office of the State Superintendent of Education

- Florida Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Indiana Department of Education
- Kansas State Department of Education
- Kentucky Department of Education
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- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Nevada Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Education Department
- North Carolina Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Utah State Office of Education
- Virginia Department of Education
- West Virginia Department of Education
- Wisconsin Department of Public Instruction

II. Extensions of the Obligation Period

A. Forty Waivers To Extend the Period of Availability of SIG Funds

1. Extended the period of availability of fiscal year (FY) 2010 SIG funds awarded to two States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of the General Education Provisions Act (GEPA) (20 U.S.C. 1225(b)).

Waiver Applicants:

- Illinois State Board of Education
- Tennessee Department of Education

2. Extended the period of availability of FY 2011 SIG funds awarded to two States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Illinois State Board of Education
- Minnesota Department of Education

3. Extended the period of availability of FY 2012 SIG funds awarded to seven States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- California Department of Education
- Minnesota Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- Ohio Department of Education
- Tennessee Department of Education
- Virginia Department of Education

4. Extended the period of availability of FY 2013 SIG funds awarded to two States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Rhode Island Department of Education
- South Carolina Department of Education

5. Extended the period of availability of FY 2014 SIG funds awarded to 25 States under section 1003(g) of the ESEA.

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicants:

- Alaska Department of Education and Early Development
- California Department of Education
- Florida Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Illinois State Board of Education
- Iowa Department of Education
- Louisiana Department of Education
- Maryland State Department of Education
- Michigan Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Montana Office of Public Instruction
- New Jersey Department of Education
- New Mexico Public Education Department
- North Carolina Department of Public Instruction
- North Dakota Department of Public Instruction
- Ohio Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Utah State Office of Education
- Virginia Department of Education
- West Virginia Department of Education
- Wisconsin Department of Public Instruction

B. One Waiver To Extend the Period of Availability of Funds Received Under Section 1003(g) of the ESEA and Included in the Consolidated Grant Funds for Insular Areas

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- Virgin Islands Department of Education

C. One Waiver To Extend the Period of Availability of Funds for State Assessments and Related Activities Awarded Under Section 6113(b) of the ESEA

Provision waived: Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

Waiver Applicant:

- North Dakota Department of Public Instruction

D. Three Waivers To Carry Over SIG Funds To Allow States To Award Funds to LEAs Through a Competition To Be Conducted During the 2015–2016 School Year

Provision waived: Section 1003(g) of the ESEA.

Waiver Applicants:

- Alaska Department of Education and Early Development
- Rhode Island Department of Elementary and Secondary Education
- Utah State Office of Education

III. Waiver of SIG Requirements

One Waiver Granting an LEA Additional Time To Meet Teacher and Principal Evaluation Requirements

Provision waived: Section I.A.2(d)(1)(i)(B) of the SIG final requirements (75 FR 66363).

Waiver Applicant:

- Washington Office of the Superintendent of Public Instruction

Description of Waiver: Allowed the State to permit an LEA that was implementing the transformation model during the 2013–2014 school year with SIG funds, which required development and implementation of a teacher and principal evaluation system, to have additional time to meet the teacher and principal evaluation requirement in a

school that was not able to do so that year.

IV. Waivers Allowing SEAs To Approve Schools or LEAs Identified as in Need of Improvement To Become SES Providers

Five Waivers To Permit SEAs To Approve a School or LEA Identified for Improvement, Corrective Action, or Restructuring To Serve as an SES Provider

Provisions waived: 34 CFR 200.47(b)(1)(iv)(A) and (B).

Waiver Applicants:

- Iowa Department of Education
- Montana Office of Public Instruction
- North Dakota Office of Public Instruction
- Washington Office of the Superintendent of Public Instruction
- Wyoming Department of Education

Description of Waiver: To permit State to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as an SES provider for the 2015–2016 school years.

V. Waivers of Requirements Related to State Academic Standards and Assessments

A. Four Waivers Allowing Substitution of Standards or Assessments

Provisions waived: Section 1111(b)(1)(B) and (3)(C)(i) of the ESEA.

Waiver Applicants:

- Hawaii State Department of Education
- New Mexico Public Education Department

Description of Waiver: One-year waiver for the 2014–2015 school year of the statutory and regulatory requirements under Title I, Part A of the ESEA that required the State to apply the same academic achievement standards, and used the same academic assessments, for all public school children in the State.

Waiver Applicant:

- New Jersey Department of Education

Description of Waiver: One-year waiver for the 2014–2015 school year of the statutory and regulatory requirements under Title I, Part A of the ESEA so that New Jersey could use, with respect to a student who was not yet enrolled in high school but who took advanced, high school level mathematics coursework and the corresponding advanced, high school level assessment, the student's score on that assessment for Federal accountability purposes for the grade in which the student was enrolled.

Waiver Applicant:

- Oklahoma State Department of Education

Description of Waiver: One-year waiver for the 2014–2015 school year of the statutory and regulatory requirements under Title I, Part A of the ESEA so that Oklahoma could use, with respect to a student who was not yet enrolled in high school but who took advanced, high school level mathematics coursework and the corresponding advanced, high school level assessment, that student's score on that assessment for Federal accountability purposes for the grade in which the student was enrolled.

B. Six Waivers of Requirements Related to Reporting Assessment Results or Accountability Determinations

Provision waived: Section 1111(b)(2)(C)(v)(II)(cc) of the ESEA.

Waiver Applicant:

- California Department of Education

Description of Waiver: Allowed California to exclude the achievement of students with the most significant cognitive disabilities who participated in the field tests in the 2014–2015 school year from the calculation of performance against AMOs for a school or LEA in which such students were enrolled.

Provision waived: Section 1111(b)(3)(C)(xii) of the ESEA.

Waiver Applicant:

- California Department of Education

Description of Waiver: The waiver permitted California and its LEAs to refrain from producing or providing individual student interpretive, descriptive, and diagnostic reports that included information regarding achievement on State assessments for students with the most significant cognitive disabilities who participated in the field tests in the 2014–2015 school year.

Provision waived: Section 1111(b)(3)(C)(xii) of the ESEA.

Waiver Applicant:

- Hawaii State Department of Education

Description of Waiver: Waived the requirement to provide individual student interpretive, descriptive, and diagnostic reports that included information regarding achievement on State assessments to parents, teachers, and principals as soon as it was practically possible after an assessment was given.

Provisions waived: Section 1111(h) and (b)(2)(C)(v)(II) of the ESEA.

Waiver Applicant:

- Mississippi Department of Education

Description of Waiver: Waiver approved accountability flexibility under ESEA flexibility with respect to Armstrong Middle School and Starkville High School.

Provisions waived: Section 1111(h)(1)(C)(i) and (2)(B) of the ESEA.

Waiver Applicant:

- California Department of Education

Description of Waiver: Permitted California and its LEAs to refrain from including the results of students with the most significant cognitive disabilities who participated in the field tests in the 2014–2015 school year in reporting student achievement on State and local report cards.

VI. AMAO 3 Determinations—AMAO Determinations

Fourteen Waivers of the Requirement To Make AMAO 3 Determinations

One-year waiver of the achievement component of AMAO 3 to permit LEAs receiving Title III subgrants that did not have assessment data to demonstrate they met the AMO component of AMAO 3 for the 2014–2015 school year due to the transition to new assessments to continue the same Title III interventions in the 2015–2016 school year that they implemented in the 2014–2015 school year.

Provision waived: Section 3122(a)(3)(A)(iii) of the ESEA.

Waiver Applicants:

- Arizona Department of Education
- Connecticut State Department of Education
- Delaware Department of Education
- Florida Department of Education
- Georgia Department of Education
- Idaho State Department of Education
- Indiana Department of Education
- Montana Office of Public Instruction
- Oregon Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Utah State Office of Education
- Washington Office of the Superintendent of Public Instruction

VII. Waivers Allowing Flexibility To Support School Improvement

Two Waivers of State-Level Reservations To Support School Improvement

Waivers related to State-level reservations to support school improvement, allowing SEAs flexibility to distribute funds to LEAs for use in priority and focus schools. The required reservation was not waived; the waiver merely permitted an SEA to distribute the funds to schools that were not identified for improvement, corrective action, or restructuring.

Provision waived: Section 1003(a) of the ESEA.

Waiver Applicants:

- Texas Education Agency
- Virginia Department of Education

VIII. Waivers of the Requirement To Make AYP Determinations

Five Waivers of the Requirement To Make AYP Determinations Based on Assessment Results

One-year waiver of the statutory and regulatory requirements under Title I, Part A of the ESEA that required an LEA and an SEA, respectively, to use the results from the State's academic assessments to make AYP determinations for schools and LEAs.

Provisions waived: Section 1116(a)(1)(A) and (c)(1)(A) of the ESEA.

Waiver Applicants:

- California Department of Education
- Montana Office of Public Instruction
- North Dakota Department of Public Instructions
- Vermont Agency of Education
- Washington Office of the Superintendent of Public Instruction

IX. Waivers Allowing SEAs To Carry Out Significant Education Reforms

Six Waivers Allowing LEAs To Carry Out Significant Education Reforms To Improve Student Achievement

Waivers to carry out significant education reforms to improve student achievement for school year 2015–2016.

Provisions waived: Sections 1113(a)(3)–(4) and (c)(1), 1114(a)(1), 1116(b) (except (b)(13)) and (c)(7), 2141(a), and 6123(b)(1), (d)(2), and (e)(1) of the ESEA.

Waiver Applicants:

- Fresno Unified School District—California Office of Reform Education (CORE)
- Los Angeles Unified School District—CORE
- Long Beach Unified School District—CORE
- Oakland Unified School District—CORE
- Santa Ana Unified School District—CORE
- San Francisco Unified School District—CORE

X. Waivers Authorizing SEAs To Waive the Carryover Limitation

Two Waivers Authorizing SEAs To Waive the Carryover Limitation for LEAs

Waivers authorizing SEAs to waive the carryover limitation for an LEA that needed an additional waiver beyond what the SEA was otherwise authorized to grant.

Provision waived: Section 1127(b) of the ESEA.

Waiver Applicant:

- Michigan Department of Education

Description of Waiver: One-year waiver allowed Michigan to grant five LEAs a waiver of the carryover limitation with respect to FY 2013 Title I, Part A funds even if the LEA received a carryover waiver of either its FY 2011 or FY 2012 Title I, Part A funds from the State.

Waiver Applicant:

- Washington Office of the Superintendent of Public Instruction

Description of Waiver: One-year waiver allowed Washington to grant specific LEAs a waiver of the carryover limitation with respect to unexpended FY 2014 Title I, Part A funds even if an LEA received a carryover waiver of either its FY 2012 or FY 2013 Title I, Part A funds from the State.

XI. Waiver Regarding Public School Choice Notice

One Waiver Regarding Notification of Public School Choice

Waived the requirement for an LEA to provide parents of eligible students with notice as to their public school choice options at least 14 days before the start of the school year. This waiver applied only to the notice required for parents of children attending the three Title I schools that either were newly identified for improvement for the 2015–2016 school year or that could have exited improvement, corrective action, or restructuring based on the assessments administered in the 2014–2015 school year, but did not.

Provisions waived: Section 1116(b)(1)(E)(i) of the ESEA and 34 CFR 200.37(b)(4)(iv).

Waiver Applicant:

- Wyoming Department of Education

XII. Waiver Allowing Flexibility in the Use of Funds Reserved for State Award Programs

One Waiver Allowing Flexibility in the Use of Funds Reserved for State Award Programs

Waiver allowed funds reserved for State awards programs to go to any reward school and extended the period of availability of Wisconsin's FY 2013 Title I school rewards programs allocation until September 30, 2016.

Provision waived: Section 1117(b)(1)(B) of the ESEA.

Waiver Applicant:

- Wisconsin Department of Public Instruction

XIII. Waiver Relating to Highly Qualified Teachers

A. One Waiver Allowing Flexibility Regarding the Definition of ''Highly Qualified Teacher''

A waiver allowing, through the 2018–2019 school year, New Mexico's LEAs to apply to use the term ''highly qualified teacher'' to refer to a teacher who received a summative rating of ''effective,'' ''highly effective,'' or ''exemplary'' and, accordingly, has earned at least 50 percent of the possible student achievement measures in New Mexico's teacher evaluation and support system, in lieu of meeting requirements in section 9101(23)(C)(ii) of the ESEA regarding subject-matter expertise.

Provision waived: Section 9101(23)(C)(ii) of the ESEA.

Waiver Applicant:

- New Mexico Public Education Department

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: October 3, 2017.

Jason Botel,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2017–21619 Filed 10–5–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form or at the following Internet address: *http://www.bpa.gov/corporate/business/bpi.*

Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form or available at the following Internet address: *http://www.bpa.gov/corporate/business/bfai.*

ADDRESSES: Unbound copies of the BPI or BFAI may be obtained by sending a request to the Head of the Contracting Activity, Routing CGP–7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: Head of the Contracting Activity (503) 230–5498.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from rate payer revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.* and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles set forth in 2 CFR 200.

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for offerors to obtain information on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 20, 2017.

Nicholas M. Jenkins,

Manager, Purchasing/Property Governance.

[FR Doc. 2017–21576 Filed 10–5–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Klickitat Hatchery Upgrades

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands assessment.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), BPA intends to prepare an EIS to determine whether to fund the Confederated Tribes of the Yakama Nation's proposal to upgrade facilities at the Klickitat Hatchery. The hatchery produces spring and fall Chinook salmon and coho salmon, and is funded by National Marine Fisheries Service (NMFS) under the Mitchell Act. It is operated jointly by the Yakama Nation and Washington Department of Fish and Wildlife (WDFW). The hatchery is located in Klickitat County on property owned by WDFW, about seven miles east of Glenwood, Washington. The hatchery was built in 1954 and most of the facilities have not been renovated since then.

The one-time upgrades would include improving surface and groundwater water intakes, discharge piping, and pumps; rebuilding the pollution abatement system; updating sections of the hatchery building; and adding rearing tanks, a storage building, and possibly staff residences. The proposed upgrades would update old facilities and would facilitate increased production of spring Chinook by the Yakama Nation. BPA is not proposing to fund fish production or to take over any Mitchell Act funding for the hatchery. NMFS will be a cooperating agency on the EIS.

In accordance with U.S. Department of Energy floodplain and wetland regulations, BPA will analyze impacts to floodplains and wetlands as well as measures to avoid or minimize potential effects to these resources. The assessment will be included in the EIS.

With this Notice of Intent, BPA is initiating the public scoping process for the EIS. BPA is requesting comments about potential environmental impacts that should be considered as an EIS is prepared.

In addition, BPA is also providing notice of cancellation of DOE/EIS–0424 Klickitat Hatchery Complex Program. Based on public comments on the 2011 draft DOE/EIS–0424, as well as changes in agencies' funding of various activities described in the EIS, BPA is canceling that environmental review process and will focus on the proposed Klickitat Hatchery Upgrades EIS.

DATES: Written comments are due to the address below no later than November 27, 2017. Comments may also be made at the scoping meeting to be held on October 25, 2017 at the address below.

ADDRESSES: Comments on the proposed scope of the Draft EIS and requests to be placed on the project mailing list may be mailed by letter to Bonneville Power Administration, Public Affairs Office—DKE–7, P.O. Box 3621, Portland, OR 97208–3621, or sent by fax to 503–230–4019. You may also call BPA's toll-free comment hotline at 1–800–622–4519 and leave a message (please include the name of the project), or submit comments online at *www.bpa.gov/comment.* All comments received will be accessible from the project Web site at *www.bpa.gov/goto/KlickitatHatcheryUpgrades.*

On October 25, 2017, a scoping meeting will be held from 6:00 p.m. to 8:00 p.m. at the Lyle Lions Community Center, Highway 14 and Third Street, Lyle, Washington 98365. At this informal open-house meeting, BPA will provide project information and maps and will make members of the project team available to answer questions and accept oral and written comments.

FOR FURTHER INFORMATION CONTACT: David Kennedy, Executive Manager Environmental Planning and Analysis, Bonneville Power Administration, EC–4, P.O. Box 3621, Portland, OR 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–3769; or email *dkkennedy@bpa.gov.* Additional information can be found at the project Web site: *www.bpa.gov/goto/KlickitatHatcheryUpgrades.*

SUPPLEMENTARY INFORMATION: The Yakama Nation is proposing the Klickitat Hatchery upgrades to update old facilities and to facilitate a possible increase in production of spring Chinook salmon. Although the Klickitat population of spring Chinook is not listed under the Endangered Species Act (ESA), WDFW considers it depressed due to chronically low adult returns. On average, the Klickitat spring Chinook run comprises approximately 75% hatchery and 25% natural-origin fish. In addition, since 1994, low hatchery productivity has limited the average annual harvest in sport and Tribal fisheries in the Klickitat basin to 840 fish, although the overall project goal for in-basin sport and Tribal harvest is 3,000 adults annually.

BPA's proposed funding of the Klickitat Hatchery upgrades would

support efforts to protect, mitigate, and enhance fish and wildlife affected by the development and operation of the Federal Columbia River Power System in the mainstem Columbia River and its tributaries, including the Klickitat River, under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Act) (16 U.S.C. 839b(h)(10)). Under the Act, BPA funds fish and wildlife protection, mitigation, and enhancement actions consistent with the Northwest Power and Conservation Council's (Council) Fish and Wildlife Program. Under this program, the Council makes recommendations to BPA concerning which fish and wildlife projects to fund. The Klickitat Hatchery upgrades are being reviewed by the Council for recommendation to BPA for funding.

In addition, on May 2, 2008, BPA, the Bureau of Reclamation, and the U.S. Army Corps of Engineers signed the 2008 Columbia Basin Fish Accords Memorandum of Agreement with the Three Treaty Tribes: The Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of Warm Springs Reservation. The agreement includes funding for this hatchery project, subject to compliance with NEPA and other environmental review requirements.

The proposal is also consistent with the policy direction in BPA's Fish and Wildlife Implementation Plan EIS, which calls for protecting weak stocks while sustaining overall populations of fish for their economic and cultural value, including long-term harvest opportunities.

Upgrades at the existing hatchery would include rehabilitating existing water intakes at Upper and Lower Indian Ford Springs, updating and rerouting water supply and discharge piping, refurbishing a pump station at an existing surface water intake in the Klickitat River, demolishing the existing pollution abatement pond and converting an existing fall Chinook rearing pond to a pollution abatement pond, replacing the existing adult holding and spawning building, adding circular rearing tanks, building a chemical storage shed, and renovating the existing hatchery building to improve usable space, security, and operations monitoring systems. The total disturbed area would be approximately 16 acres. In addition, BPA might also fund construction of two staff residences.

Upgrades would improve rearing conditions for spring Chinook, would provide the capacity to increase production from 600,000 spring Chinook smolts to 800,000 smolts, and would help the spring Chinook program transition from using only hatchery-raised fish for broodstock (a ''segregated'' or ''isolated'' program) to a program that incorporates natural-origin fish in the broodstock (an ''integrated'' program). Currently, natural-origin spring Chinook from the Klickitat basin have higher survival rates than hatchery fish. Incorporating natural-origin fish into the broodstock is expected to increase the fitness, productivity, survival, and harvest of this species.

Upgrades to the water system would increase the operational flexibility of the facility. Adding river water to the water supply would allow operators to release smolts later in the spring when conditions in the Columbia River are more favorable to smolts migrating to the ocean. The water system upgrades also would reduce long-term maintenance and improve the quality of the hatchery effluent. Energy efficiency measures would be incorporated as possible into facility upgrade designs. BPA is not proposing to fund fish production or to take over any Mitchell Act funding for the hatchery.

BPA will be the lead agency for preparation of the EIS. Cooperating agencies in addition to NMFS may be identified as the proposed project proceeds through the NEPA process.

Alternatives Proposed for Consideration. In the EIS, BPA is currently considering two alternatives: To fund proposed upgrades that would improve hatchery facilities, would allow the transition to an integrated program, and would provide additional capacity for spring Chinook smolt production to increase from 600,000 to 800,000; and a no action alternative of not funding the proposal. Other reasonable alternatives identified during the scoping process may also be evaluated in the EIS.

Public Participation and Identification of Environmental Issues. The potential environmental issues identified so far for this project include effects of construction activity on water quality, Endangered Species Act (ESA)-listed fish, and rare and sensitive plants and wildlife; and the operational effects of changes to the water supply and discharge system on water quality. The effects of changes to the spring Chinook program that could be facilitated by the upgrades will also be evaluated, including the risk of competition between increasing numbers of naturally spawning spring Chinook and ESA-listed fish such as bull trout and steelhead; the effects of additional activities and facilities required to monitor a changed hatchery program; and the effects of increases in harvest opportunities.

BPA has established an extended seven-week scoping period during which concerned members of the public, interest groups, state and local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal are addressed in the EIS and will help to identify significant or potentially significant impacts that may result from the proposed project.

When completed, the Draft EIS will be circulated for review and comment, and BPA will hold at least one public comment meeting to solicit comments on the Draft EIS. BPA will consider and respond in the Final EIS to comments received on the Draft EIS. BPA's subsequent decision will be documented in a Record of Decision.

Issued in Portland, Oregon, on September 28, 2017.

Elliot E. Mainzer,

Administrator and Chief Executive Officer.

[FR Doc. 2017–21575 Filed 10–5–17; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9968–99–OECA]

Production of Confidential Business Information in Pending Enforcement Litigation; Transfer of Information Claimed as Confidential Business Information to the United States Department of Justice and Party to Certain Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (''EPA'') is providing notice of disclosure of information which has been submitted to EPA by renewable fuel producers, renewable identification number (''RIN'') generators, third party engineers, obligated parties, and RIN owners that is claimed to be, or has been determined to be, confidential business information (''CBI''), in civil enforcement litigation against NGL Crude Logistics, LLC (f/k/a Gavilon, LLC) and Western Dubuque Biodiesel, LLC. Disclosure is in response to discovery requests from NGL Crude Logistics, LLC (f/k/a Gavilon, LLC) in the litigation styled *United States of America* v. *NGL Crude Logistics, LLC (f/k/a Gavilon, LLC) and Western Dubuque Biodiesel, LLC,* Case No. 2:16–cv–1038–

LRR, pending in the United States District Court for the Northern District of Iowa (the ''NGL Litigation''). The court has entered a Stipulated Protective Order (''Protective Order'') between the United States and NGL Crude Logistics, LLC (f/k/a Gavilon, LLC) that governs the treatment of CBI, including a provision that interested third parties may seek additional protections for their CBI.

DATES: Access by the United States Department of Justice (''DOJ'') to material, including CBI, discussed in this Notice, is ongoing and expected to continue during the NGL Litigation. The United States does not intend to produce documents containing CBI to NGL until after potentially impacted third parties have an opportunity to inspect the Protective Order. The inspection period will last for fourteen (14) calendar days after publication of this Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Matthew Kryman, Air Enforcement Division, Office of Civil Enforcement, 1595 Wynkoop Street (8MSU), Denver, CO 80202; telephone number: 303–312–6272; fax number: 303–312–6003; email address: *kryman.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

Entities potentially affected by this action include renewable fuel producers, RIN generators, third party engineers, obligated parties, and RIN owners who have submitted information to EPA that is claimed to be, or has been determined to be, CBI. Potentially affected categories of such entities include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially affected entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	221210	4925	Manufactured gas production and distribution.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities who may be impacted by this action. Other types of entities not listed in the table could also be impacted. If you have any questions regarding the applicability of this action, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Action Description

The United States has initiated a civil enforcement action alleging that NGL Crude Logistics, LLC (f/k/a Gavilon, LLC) and Western Dubuque Biodiesel, LLC violated Section 211(o) of the Clean Air Act and the Renewable Fuel Standard regulations issued thereunder in connection with the sale and repurchase of biodiesel and RINs in calendar year 2011. The United States settled its claims against Western Dubuque Biodiesel, LLC, and the United States District Court for the Northern District of Iowa granted the motion to enter the amended consent decree on April 11, 2017. The United States' claims against NGL Crude Logistics, LLC (f/k/a Gavilon, LLC) are still pending. Notice is being provided, pursuant to 40 CFR 2.209(d), to inform affected businesses that EPA intends to transmit certain information, which has been submitted by renewable fuel producers, RIN generators, third party engineers, obligated parties, and RIN owners that is claimed to be, or has been determined to be, CBI, to NGL Crude Logistics, LLC (f/k/a Gavilon, LLC) in this enforcement action. The information includes EPA communications with, and information provided by, renewable fuel producers and RIN generators in connection with petitions under 40 CFR 80.1416 and the production of renewable fuel and generation of RINs. The information also includes EPA communications with, and information provided by, obligated parties and RIN owners regarding specific RIN buys, sells, separations, and retirements. Examples of such information may include EPA registration information; information submitted to the EPA Moderated Transaction System (EMTS); EMTS RIN generation, transaction, and activity reports; documents mentioning, referring to, or discussing company fuel production activities or RIN generation activities; and non-public petition information submitted under 40 CFR 80.1416.

The treatment of this information is governed by the Protective Order entered into by the United States and NGL Crude Logistics, LLC. Interested third parties may find the Protective Order in the docket for the NGL Litigation, 2:16–cv–1038–LRR, ECF Document No. 68 (N.D. Iowa). The Protective Order governs the distribution of CBI, limits its use to the NGL Litigation, and provides for its return or destruction at the conclusion of the litigation. It also includes a provision that interested third parties may seek additional protections for their CBI. In accordance with 40 CFR 2.209(c–(d), DOJ must disclose such information to the extent required to comply with the discovery obligations of the United States in the NGL Litigation, including its obligations under the Protective Order.

Dated: September 25, 2017.

Phillip A. Brooks,

Director, Air Enforcement Division.

[FR Doc. 2017–21615 Filed 10–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2060–0275; FRL–9968–96–OAR]

Proposed Information Collection Request; Comment Request; Regulation of Fuels and Fuel Additives: Detergent Gasoline (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Regulation of Fuels and Fuel Additives: Detergent Gasoline (Renewal)'' (EPA ICR No. 1655.09, OMB Control No. 2060–0275) to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act. Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through November 30, 2017. 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.

DATES: Comments must be submitted on or before December 5, 2017.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0595 online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Environmental Engineer, Compliance Division, Office of Transportation and Air Quality, Mail Code 6405A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; Telephone: (202) 343–9303; Fax: (202) 343–2802; Email address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting 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.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Gasoline combustion results in the formation of engine deposits. The accumulation of deposits, particularly in the orifices of fuel injectors and on intake valves, typically results in increased emissions and reduced engine performance. As fuel injectors replaced carburetors in the 1980's, a number of vehicle manufacturers experienced problems with deposit formation. Detergent additives, which had been available for years to control deposits in carbureted vehicles, were improved to accommodate the new technology. However, their use was voluntary and there were no regulatory standards by which to gauge their effectiveness. Congress recognized the importance of effective detergent additives in minimizing vehicle emissions, and added Section 211(1) in the Clean Air Act Amendments of 1990. It required gasoline to contain detergent additives, effective January 1, 1995, and provided the Environmental Protection Agency (EPA) with the authority to establish specifications for such additives. The regulations at 40 CFR 80—Subpart G implemented certification requirements for detergents and imposed a variety of recordkeeping and reporting requirements for certain parties involved with detergents, gasoline, or post-refinery component (any gasoline blending stock or any oxygenate that is blended with gasoline subsequent to the gasoline refining process (PRC)). All gasolines must contain certified detergents, with the exception of research, racing, and aviation gasolines.

The EPA maintains a list of certified gasoline detergents at *https://www3.epa.gov/otaq/fuels1/ffars/web-detrg.htm.* As of March 2014, there were 374 certified detergents and 17 detergent manufacturers. Most of the certification activity occurred during the early years of the program. In 2012, 12 detergents were certified. In 2013, only 3 new detergents were certified.

There are approximately 250 refiners and importers of gasoline, 1,350 blenders of detergent into gasoline or PRC, 8,000 carriers of gasoline or PRC, 200,000 gasoline retail outlets, and 100,000 fleet facilities which handle gasoline. The estimated total annual burden for respondents for this collection is 220,181 hours and $20,180,587, including $335,040 in annualized capital or O&M costs. The estimated total annual Agency burden is 200 hours and $16,400 in labor costs.

Form Numbers: None.

Respondents/Affected Entities:

The respondents are related to the following major group Standard Industrialization Classification (SIC) codes:

5172—Petroleum Products

2911—Petroleum Refining

The respondents are related to the following major group NAICS codes:

324110—Petroleum Refineries

324199—All Other Petroleum and Coal Products Manufacturing

325110—Petrochemical Manufacturing

325199—All Other Basic Organic Chemical Manufacturing

424710—Petroleum Bulk Stations and Terminals

424720—Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)

Respondent's Obligation to Respond: Mandatory per 40 CFR 80—Subpart G, Detergent Gasoline.

Estimated Number of Respondents: 69,504 (total).

Frequency of Response: On occasion.

Total Estimated Burden: 220,181 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $20,180,587.00 (per year), includes $335,040.00 annualized capital or operation & maintenance costs.

Changes in Estimates: The previous clearance consisted of 220,181 hours (3.17 hours per response), labor costs of $18,500,528, and O&M costs of $335,040, for a total cost of $18,835,568. There is no increase of hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The respondent universe and responses also remained the same in this collection. There was an increase in cost to the industry of $1,345,019 per year due to updated numbers used to calculate the industry burden and to account for inflation.

Dated: September 28, 2017.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2017–21609 Filed 10–5–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9035–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements (EIS)
Filed 09/25/2017 Through 09/29/2017
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search.*

EIS No. 20170190, Draft, USACE, CA, Ballona Wetlands Restoration Project, Comment Period Ends: 11/24/2017, Contact: Daniel Swenson 213–452–3414

EIS No. 20170191, Final Supplement, USAF, AK, F–35A Operational Beddown—Pacific, Review Period Ends: 11/05/2017, Contact: Mike Ackerman 210–925–2741

EIS No. 20170192, Draft Supplement, FERC, FL, Southeast Market Pipelines Project, Comment Period Ends: 11/20/2017, Contact: John Peconom 202–502–6352

EIS No. 20170193, Final, USACE, CA, Berths 226 to 236 [Everport] Container Terminal Improvements Project, Review Period Ends: 11/06/2017, Contact: Theresa Stevens 805–585–2146

EIS No. 20170194, Final, BLM, NV, Gold Bar Mine Project, Review Period Ends: 11/05/2017, Contact: Christine Gabriel 775–635–4164

EIS No. 20170195, Revised Draft, USFS, CA, Lassen National Forest Over-Snow Vehicle (OSV) Use Designation, Comment Period Ends: 11/20/2017, Contact: Chris Obrien 530–252–6698

EIS No. 20170196, Final Supplement, USACE, CA, Folsom Dam Raise Project, Review Period Ends: 11/05/2017, Contact: Victoria Hermanson 916–557–7330

EIS No. 20170197, Final, FAA, OR, ADOPTION—Proposed Establishment and Modification of Oregon Military Training Airspace, Contact: Paula Miller 202–267–7378

Dated: October 2, 2017.

Kelly Knight,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2017–21548 Filed 10–5–17; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board—Appointment of Members

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the Performance Review Board of the Equal Employment Opportunity Commission.

FOR FURTHER INFORMATION CONTACT: Traci M. DiMartini, Chief Human Capital Officer, U.S. Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507, (202) 663–4306.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive' s performance by the supervisor, and makes recommendations to the Chair, EEOC, with respect to performance ratings, pay level adjustments and performance awards.

The following are the names and titles of executives appointed to serve as members of the SES PRB. Designated members will serve a 12-month term; which begins on November 1, 2017.

PRB Chair:

Mr. Bryan C. Burnett, Chief Information Officer, Equal Employment Opportunity Commission

Members:

Mr. Carlton Hadden, Director, Office of Federal Operations, Equal Employment Opportunity Commission

Ms. Germaine P. Roseboro, Chief Financial Officer, Equal Employment Opportunity Commission

Ms. Marika Litras, Enforcement Director, U.S. Department of Labor

Mr. Stuart Ishimaru, Assistant Director, Office of Equal Opportunity and Fairness, Consumer Financial Protection Bureau

By the direction of the Commission.

Dated: September 29, 2017.

Cynthia G. Pierre,

Chief Operating Officer.

[FR Doc. 2017–21530 Filed 10–5–17; 8:45 am]

BILLING CODE 6570–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2017–6008]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 92–34 Application for Short-Term Letter of Credit Export Credit Insurance Policy.

SUMMARY: The Export-Import Banks of the United States (Ex-Im Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection of information is necessary, pursuant to 12 U.S.C. Sec. 635 (a) (1), to determine eligibility of the applicant for Ex-Im Bank assistance.

The Application for Short Term Letter of Credit Export Credit Insurance Policy is used to determine the eligibility of the applicant and the transaction for Export Import Bank assistance under its insurance program. Export Import Bank customers are able to submit this form on paper or electronically.

The application tool can be reviewed at: *https://www.exim.gov/sites/default/files//forms/eib92-34.pdf.*

DATES: Comments must be received on or before December 5, 2017 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Mardel West, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–34 Application for Short-Term Letter of Credit Export Credit Insurance Policy.

OMB Number: 3048–0009.

Type of Review: Regular.

Need and Use: This form is used by a financial institution (or broker acting on its behalf) to obtain approval for

coverage of a short-term letter of credit. The information allows the Ex-Im Bank staff to make a determination of the eligibility of the applicant and transaction for Ex-Im Bank assistance under its programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 11.

Estimated Time per Respondent: 1 hr.

Annual Burden Hours: 11.

Frequency of Reporting of Use: On occasion.

Government Reviewing Time per Year: 11 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $468 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $561.

Bassam Doughman,

IT Specialist.

[FR Doc. 2017–21578 Filed 10–5–17; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Federal Financial Accounting Technical Release 18, Implementation Guidance for Establishing Opening Balances

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Federal Financial Accounting Technical Release (TR) 18, *Implementation Guidance for Establishing Opening Balances.*

The Technical Release is available on the FASAB Web site at *http://www.fasab.gov/accounting-standards/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW., Mailstop 6H19, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: October 2, 2017.

Wendy M. Payne,

Executive Director.

[FR Doc. 2017–21593 Filed 10–5–17; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before December 5, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–XXXX.

Title: Mobility Fund Phase II Challenge Process.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents and Responses: 500 respondents and 500 responses.

Estimated Time per Response: 204 hours for challengers; 71 hours for challenged parties.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the currently approved information collection is contained in sections 154, 254, and 303(r) of the Communications Act, as amended, 47 U.S.C. 4, 254, 303(r).

Estimated Total Annual Burden: 78,725 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: To the extent the information submitted pursuant to this information collection is determined to be confidential, it will be protected by the Commission. If a respondent seeks to have information collected pursuant to this information collection withheld from public inspection, the respondent may request confidential treatment pursuant to section 0.459 of the Commission's rules for such information. *See* 47 CFR 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: A request for approval of this new information collection will be submitted to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year

clearance from OMB. In its November 2011 *USF/ICC Transformation Order* (FCC 11–161), the Commission established the Mobility Fund, which consists of two phases. Mobility Fund Phase I (MF–I) provided one-time universal service support payments to immediately accelerate deployment of mobile broadband services. MF–II will use a reverse auction to provide ongoing universal service support payments to continue to advance deployment of such services. The Commission adopted the rules and framework for MF–I in the *USF/ICC Transformation Order,* and sought comment in an accompanying further notice of proposed rulemaking on the proposed framework for MF–II. In its February 2017 *Mobility Fund II Report and Order and Further Notice of Proposed Rulemaking* (*MF–II Report and Order and/or FNPRM*) (FCC 17–11), the FCC adopted the rules and framework for moving forward expeditiously with the MF–II auction. Among other things, the Commission stated in the *MF–II Report and Order* that, prior to the auction, it would establish a map of areas presumptively eligible for MF–II support based on the most recently available FCC Form 477 mobile wireless coverage data, and provide a limited timeframe for parties to challenge those initial determinations during the pre-auction process. The Commission sought comment in the accompanying *Mobility Fund II FNPRM* on how to best design a robust, targeted MF–II challenge process that efficiently resolves disputes about the areas eligible for MF–II support.

In August 2017, the Commission released an *Order on Reconsideration and Second Report and Order* (*Challenge Process Order*) (FCC 17–102) in which it (1) reconsidered its earlier decision to use FCC Form 477 data to compile the map of areas presumptively eligible for MF–II support and decided it would instead conduct a new, one-time data collection with specified data parameters tailored to MF–II to determine the areas in which there is deployment of qualified LTE that will be used (together with high-cost disbursement data available from the Universal Service Administrative Company (USAC)) for this purpose, and (2) adopted a streamlined challenge process that will efficiently resolve disputes about areas deemed presumptively ineligible for MF–II support. The map of areas presumptively eligible for MF–II support will serve as the starting point for the challenge process pursuant to which an interested party (challenger) may initiate a challenge with respect to one or more areas initially deemed ineligible for MF–II support (*i.e.,* areas *not* listed on the Commission's map of areas presumptively eligible for MF–II support and challenged parties can respond to challenges.

A challenger seeking to initiate a challenge of one or more areas initially deemed ineligible in the Commission's map of areas presumptively eligible for MF–II support may do so via the online challenge portal developed by USAC for this purpose (the USAC portal). For each state, a challenger must (1) identify the area(s) it seeks to challenge, (2) submit detailed proof of a lack of unsubsidized, qualified 4G LTE coverage in each challenged area in the form of actual outdoor speed test data collected using the standardized parameters specified by the Commission in the *Challenge Process Order* and any other parameters the Commission or the Wireless Telecommunications Bureau and Wireline Competition Bureau (the Bureaus) may implement, and (3) certify its challenge.

After the challenge window closes, the USAC system will use an automated challenge validation process developed by USAC to validate a challenger's evidence and will determine which challenged areas pass validation and which fail. Once all valid challenges have been identified, a challenged party that chooses to respond to any valid challenge(s) will have a response window within which to submit additional data via the online USAC portal. A challenged party may submit technical information that is probative regarding the validity of a challenger's speed tests (*i.e.,* information demonstrating that the challenger's speed tests are invalid or do not accurately reflect network performance), including speed test data and other device-specific data collected from transmitter monitoring software or, alternatively, may submit its own speed test data that conforms to the same standards and requirements specified by the Commission and the Bureaus for challengers.

In conjunction with the qualified 4G LTE data separately collected pursuant to OMB 3060–1242 that will be used to create the map of areas presumptively eligible for MF–II support, the information collected under this new MF–II challenge process collection will enable the Commission to efficiently resolve disputes concerning the eligibility or ineligibility of an area initially deemed ineligible for MF–II support and establish the final map of areas eligible for such support, thereby furthering the Commission's goal of targeting MF–II support to areas that lack adequate mobile voice and broadband coverage absent subsidies through a transparent process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–21515 Filed 10–5–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination: 10367—Summit Bank, Burlington, Washington

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10367—Summit Bank, Burlington, Washington (Receiver) has been authorized to take all actions necessary to terminate the Receivership Estate of Summit Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective October 1, 2017, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: October 2, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–21505 Filed 10–5–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATES: Wednesday, October 11, 2017 at 10:00 a.m. and its Continuation on Thursday, October 12, 2017 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This Meeting Will be Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Laura E. Sinram,

Deputy Secretary of the Commission.

[FR Doc. 2017–21801 Filed 10–4–17; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012492.

Title: Schuyler Line/US Ocean Space Charter and Cooperative Working Agreement.

Parties: Schuyler Line Navigation Company, L.L.C. and U.S. Ocean, L.L.C.

Filing Party: Bryant Gardner; Winston & Strawn LLP; 1700 K Street NW., Washington, DC 20006.

Synopsis: The Agreement would authorize the parties to charter space to each other and cooperate in a pooling arrangement between the U.S. and certain countries in Africa, Europe, the Mediterranean, South and Central America, and the Caribbean.

By Order of the Federal Maritime Commission.

Dated: October 3, 2017.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–21564 Filed 10–5–17; 8:45 am]

BILLING CODE 6731–AA–P

GOVERNMENT PUBLISHING OFFICE

Depository Library Council to the Director; Meeting

The Depository Library Council (DLC) to the Director, Government Publishing Office (GPO) will meet on Monday, October 16, 2017 through Wednesday, October 18, 2017 in Arlington, Virginia. The sessions will take place from 8 a.m. to 5:30 p.m., Monday and Tuesday and 8:00 a.m. to 12:30 p.m., on Wednesday. The meeting will be held at the Doubletree Hotel, 300 Army Navy Drive, Arlington, Virginia. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. The United States Government Publishing Office is in compliance with the requirements of Title III of the Americans with Disabilities Act and meets all Fire Safety Act regulations.

Davita Vance-Cooks,

Director, Government Publishing Office.

[FR Doc. 2017–21533 Filed 10–5–17; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity.

Date: October 23, 2017.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 2, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–21526 Filed 10–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Renal and Urological Clinical Small Business Applications.

Date: November 10, 2017.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7015, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–4721, *ryan.morris@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 2, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–21527 Filed 10–5–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4337–DR; Docket ID FEMA–2017–0001]

Florida; Amendment No. 6 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 14, 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.

Alachua, Baker, Bradford, Columbia, Gilchrist, Levy, Nassau, Suwannee, and Union Counties for Individual Assistance (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. 2017–21651 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3382–EM; Docket ID FEMA–2017–0001]

Louisiana; Amendment No. 2 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 Louisiana (FEMA–3382–EM), dated August 28, 2017, and related determinations.

DATES: This amendment was issued September 10, 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 10, 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. 2017–21637 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4338–DR; Docket ID FEMA–2017–0001]

Georgia; Amendment No. 4 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 Georgia (FEMA–4338–DR), dated September 15, 2017, and related determinations.

DATES: This amendment was issued September 28, 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 Georgia is hereby amended to include permanent work under the Public Assistance program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 15, 2017.

Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barrow, Ben Hill, Berrien, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Candler, Clay, Colquitt, Cook, Coweta, Crawford, Crisp, Dawson, Dougherty, Early, Elbert, Emanuel, Evans, Fayette, Forsyth, Franklin, Gilmer, Greene, Habersham, Hall, Hancock, Harris, Hart, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jenkins, Johnson, Jones, Lamar, Laurens, Lincoln, Long, Lumpkin, Macon, Madison, Marion, Meriwether, Miller, Monroe, Montgomery, Morgan, Newton, Oconee, Oglethorpe, Peach, Pickens, Pierce, Pike, Putnam, Quitman, Rabun, Randolph, Rockdale, Schley, Screven, Seminole, Spalding, Stephens, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Toombs, Treutlen, Troup, Turner, Walton, Ware, Warren, Washington, Wayne, Wheeler, Wilcox, Wilkes, and Worth 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).

Camden, Charlton, Chatham, Coffee, Glynn, Liberty, and McIntosh 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. 2017–21647 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4341–DR; Docket ID FEMA–2017–0001]

Seminole Tribe of Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Seminole Tribe of Florida (FEMA–4341–DR), dated September 27, 2017, and related determinations.

DATES: The declaration was issued September 27, 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 27, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage to the Seminole Tribe of Florida (Tribe), and its associated lands, resulting from Hurricane Irma beginning on September 4, 2017, and continuing, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists for the Tribe and its associated lands.

You are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation for the Tribe and its associated lands. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs. For a period of 30 days from the start of the incident period, assistance for emergency protective measures, including direct Federal assistance, is authorized at 100 percent of the total eligible costs. Federal funding for debris removal will remain at 75 percent.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

Seminole Tribe of Florida and associated lands for Individual Assistance.

Seminole Tribe of Florida and associated lands for Public Assistance.

The Seminole Tribe of Florida and associated lands are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2017–21641 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4340–DR; Docket ID FEMA–2017–0001]

Virgin Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the territory of the U.S. Virgin Islands (FEMA–4340–DR), dated September 20, 2017, and related determinations.

DATES: The declaration was issued September 20, 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 20, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the territory of the U.S. Virgin Islands resulting from Hurricane Maria beginning on September 16, 2017, and continuing, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the territory of the U.S. Virgin Islands.

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 disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the territory, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public

Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William L. Vogel, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the territory of the U.S. Virgin Islands have been designated as adversely affected by this major disaster:

The island of St. Croix for Individual Assistance.

All islands in the territory of the U.S. Virgin Islands for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All islands in the territory of the U.S. Virgin Islands are eligible for assistance under the Hazard Mitigation Grant 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. 2017–21632 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4316–DR; Docket ID FEMA–2017–0001]

New Hampshire; 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 New Hampshire (FEMA–4316–DR), dated June 1, 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 Albert Lewis 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. 2017–21629 Filed 10–5–17; 8:45 am]

BILLING CODE 911–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3387–EM; Docket ID FEMA–2017–0001]

Georgia; Amendment No. 3 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 Georgia (FEMA–3387–EM), dated September 8, 2017, and related determinations.

DATES: This amendment was issued September 26, 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 20, 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. 2017–21638 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3386–EM; Docket ID FEMA–2017–0001]

South Carolina; 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 South Carolina (FEMA–3386–EM), dated September 7, 2017, and related determinations.

DATES: The amendment was issued on September 15, 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, Warren J. Riley, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Willie G. Nunn 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. 2017–21631 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3385–EM; Docket ID FEMA–2017–0001]

Florida; 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 Florida (FEMA–3385–EM), dated September 5, 2017, and related determinations.

DATES: The amendment was issued on 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: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Justó Hernández 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. 2017–21639 Filed 10–5–17; 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. 8 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 Florida (FEMA–4337–DR), dated September 10, 2017, and related determinations.

DATE: The amendment was issued on 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: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Justó Hernández 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. 2017–21648 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4336–DR; Docket ID FEMA–2017–0001]

Puerto Rico; Amendment No. 4 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 Commonwealth of Puerto Rico (FEMA–4336–DR), dated September 10, 2017, and related determinations.

DATES: This amendment was issued September 26, 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 Commonwealth of Puerto Rico 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.

The municipalities of Dorado, Fajardo, and Toa Baja for Individual Assistance.

The municipalities of Cataño, Luquillo, and Vega Baja for Individual Assistance (already designated for Public Assistance).

The municipalities of Dorado, Guarabo, and Naguabo 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. 2017–21628 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4338–DR; Docket ID FEMA–2017–0001]

Georgia; 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 Georgia (FEMA–4338–DR), dated September 15, 2017, and related determinations.

DATES: This amendment was issued September 26, 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 Georgia 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 15, 2017.

Charlton and Coffee Counties for Individual Assistance (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. 2017–21644 Filed 10–5–17; 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. 5 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 13, 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.

Citrus, DeSoto, Glades, Hardee, Hendry, Hernando, Highlands, Indian River, Lake, Marion, Martin, Okeechobee, Osceola, Seminole, Sumter, and Volusia Counties for Individual Assistance (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. 2017–21652 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4339–DR; Docket ID FEMA–2017–0001]

Puerto Rico; 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 for the Commonwealth of Puerto Rico (FEMA–4339–DR), dated September 20, 2017, and related determinations.

DATES: This amendment was issued September 28, 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 26, 2017, the President

amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Brock Long, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico resulting from Hurricane Maria beginning on September 17, 2017, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declaration of September 20, 2017, to authorize a 100 percent Federal cost share for debris removal and emergency protective measures, including direct Federal assistance, for 180 days from the date of the declaration.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(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. 2017–21630 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4327–DR; Docket ID FEMA–2017–0001]

Wyoming; 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 Wyoming (FEMA–4327–DR), dated August 5, 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, Jon Huss, 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. 2017–21643 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3390–EM; Docket ID FEMA–2017–0001]

Virgin Islands; 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 territory of the U.S. Virgin Islands (FEMA–3390–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 the territory of the U.S. Virgin Islands resulting from Hurricane Maria beginning on September 16, 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 territory of the U.S. Virgin Islands.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and 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 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, William L. Vogel, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the territory of the U.S. Virgin Islands have been designated as adversely affected by this declared emergency:

All islands in the territory of the U.S. Virgin Islands 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. 2017–21633 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3388–EM; Docket ID FEMA–2017–0001]

Seminole Tribe of Florida; 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 Seminole Tribe of Florida (FEMA–3388–EM), dated September 8, 2017, and related determinations.

DATES: The amendment was issued on 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: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Justó Hernández 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. 2017–21640 Filed 10–5–17; 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. 7 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 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: 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.

Dixie and Lafayette Counties for Individual Assistance (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. 2017–21650 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4340–DR; Docket ID FEMA–2017–0001]

Virgin Islands; 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 territory of the U.S. Virgin Islands (FEMA–4340–DR), dated September 20, 2017, and related determinations.

DATES: This amendment was issued September 23, 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 territory of the U.S. Virgin Islands 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 20, 2017.

The islands of St. John and St. Thomas for Individual Assistance (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. 2017–21636 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4335–DR; Docket ID FEMA–2017–0001]

Virgin Islands; Amendment No. 5 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 for the territory of the U.S. Virgin Islands (FEMA–4335–DR), dated September 7, 2017, and related determinations.

DATES: This amendment was issued September 28, 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 26, 2017, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Brock Long, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the territory of the U.S. Virgin Islands resulting from Hurricane Irma during the period of September 5–7, 2017, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declarations of September 7, 2017 and September 9, 2017, to authorize a 100 percent Federal cost share for debris removal and emergency protective measures, including direct Federal assistance, for 180 days from the start of the incident period.

(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. 2017–21635 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3386–EM; Docket ID FEMA–2017–0001]

South Carolina; Amendment No. 2 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 South Carolina (FEMA–3386–EM), dated September 7, 2017, and related determinations.

DATES: This amendment was issued September 29, 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 13, 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. 2017–21634 Filed 10–5–17; 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. 4 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 13, 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.

Brevard, Orange, Pasco, and St. Lucie Counties for Individual Assistance (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. 2017–21645 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4329–DR; Docket ID FEMA–2017–0001]

New Hampshire; 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 New Hampshire (FEMA–4329–DR), dated August 9 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 Albert Lewis 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. 2017–21642 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4339–DR; Docket ID FEMA–2017–0001]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4339–DR), dated September 20, 2017, and related determinations.

DATES: The declaration was issued September 20, 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 20, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico resulting from Hurricane Maria beginning on September 17, 2017, and continuing, is of sufficient severity and magnitude to warrant a major disaster 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 a major disaster exists in the Commonwealth of Puerto Rico.

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 disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Alejandro DeLaCampa, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this major disaster:

The municipalities of Aguas Buenas, Aibonito, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamón, Caguas, Canóvanas, Carolina, Cataño, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Florida, Guayama, Guaynabo, Gurabo, Humacao, Jayuya, Juana Díaz, Juncos, Las Piedras, Loíza, Luquillo, Manati, Maunabo, Morovis, Naguabo, Naranjito, Orocovis, Patillas, Ponce, Rio Grande, Salinas, San Juan, San Lorenzo, Santa Isabel,

Toa Baja, Toa Alta, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, and Yabucoa for Individual Assistance.

All 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.

All areas within the Commonwealth of Puerto Rico are eligible for assistance under the Hazard Mitigation Grant 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. 2017–21649 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4338–DR; Docket ID FEMA–2017–0001]

Georgia; Amendment No. 3 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 Georgia (FEMA–4338–DR), dated September 15, 2017, and related determinations.

DATES: This amendment was issued September 26, 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 disaster is closed effective September 20, 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. 2017–21646 Filed 10–5–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6050–N–01]

Relief From HUD Requirements Available to PHAs To Assist With Recovery and Relief Efforts on Behalf of Families Affected by Hurricanes Harvey, Irma, Maria and Future Natural Disasters Where Major Disaster Declarations Might Be Issued in 2017

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice advises the public that HUD, as a result of Presidentially declared Major Disaster Declarations (MDD) following Hurricanes Harvey, Irma and Maria has established an expedited process for the review of requests for relief from HUD regulatory and/or administrative requirements (''HUD requirements'') for public housing agencies (PHAs) and Tribes or tribally designated housing entities (TDHEs) that are located in Texas, U.S. Virgin Islands, Puerto Rico, Florida, and Georgia. The notice covers MDDs DR–4332, issued on August 25, 2017, DR–4335, issued on September 7, 2017, DR–4336, issued on September 10, 2017, DR–4337, issued on September 10, 2017, DR–4338, issued on September 15, 2017, DR–4339 issued on September 20, 2017 and DR–4340 issued on September 20, 2017. Specifically, these PHAs and Tribes/TDHEs may request waivers of HUD requirements and receive expedited review of such requests. In addition, this notice advises that PHAs, Tribes and TDHEs located in areas covered by MDDs issued during the remainder of 2017 may utilize the flexibilities and expedited waiver process set out by this notice.

DATES: *Applicable Date:* October 6, 2017.

FOR FURTHER INFORMATION CONTACT: Shelia Bethea, Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4112, Washington, DC 20410–5000, telephone number (202) 402–8120. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

From a period beginning on August 23, 2017, areas in Texas, U.S. Virgin Islands, Puerto Rico, Florida and Georgia experienced severe storms and flooding from Hurricanes Harvey, Irma and Maria. MDDs covering these areas were issued on August 25, 2017, DR–4332,[1] DR–4335,[2] September 7, 2017, DR–4336,[3] September 10, 2017, DR–4337,[4] September 10, 2017, DR–4338,[5] September 15, 2017, DR–4339,[6]

[1] *https://www.fema.gov/disaster/4332,* designating Aransas, Bee, Brazoria, Calhoun, Chambers, Colorado, Fayette, Fort Bend, Galveston, Goliad, Hardin, Harris, Jackson, Jasper, Jefferson, Kleberg, Liberty, Matagorda, Montgomery, Newton, Nueces, Orange, Refugio, Sabine, San Jacinto, San Patricio, Victoria, Waller, Wharton Counties in Texas.

[2] *https://www.fema.gov/disaster/4335,* designating St. John (Island) (County-equivalent) St. Thomas (Island) (County-equivalent) in U.S. Virgin Islands for Hurricane Irma and St. Croix for Hurricane Maria.

[3] *https://www.fema.gov/disaster/4336,* designating Canovanas (Municipio), Culebra (Municipio), Loiza (Municipio), Vieques (Municipio) in Puerto Rico for Hurricane Irma and Aguas Buenas, Aibonito, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamón, Caguas, Canóvanas, Carolina, Cataño, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Florida, Guayama, Guaynabo, Gurabo, Humacao, Jayuya, Juana Díaz, Juncos, Las Piedras, Loíza, Luquillo, Manati, Maunabo, Morovis, Naguabo, Naranjito, Orocovis, Patillas, Ponce, Rio Grande, Salinas, San Juan, San Lorenzo, Santa Isabel, Toa Baja, Toa Alta, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, and Yabucoa for Hurricane Maria.

[4] *https://www.fema.gov/disaster/4337,* designating Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lafayette, Lake, Lee, Levy, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, Suwannee, Union, Volusia in Florida.

[5] *https://www.fema.gov/disaster/4338,* designating Camden, Chatham, Coffee, Glynn, Liberty and Mcintosh in Georgia.

[6] *https://www.fema.gov/disaster/4339,* designating Puerto Rico.

September 20, 2017 and DR–4340,[7] September 20, 2017.

In order to provide relief from certain HUD requirements governing programs administered by the Office of Public and Indian Housing (PIH) to PHAs and Tribes/THDEs that are located in areas covered by MDDs 4332, 4335, 4336, 4337, 4338, 4339 and 4340 (MDD PHAs; MDD Tribes/TDHEs) HUD is publishing this notice. The notice describes a number of flexibilities that are available to such PHAs and Tribes/TDHEs, lists HUD requirements that HUD is willing to waive upon request from a PHA or Tribe/TDHE, and provides for the expedited review of waiver requests. HUD is publishing this notice to assist MDD PHAs and Tribes/TDHEs in responding to this major disaster declarations and in contributing to long-term recovery. Further, given the number of natural disasters that have occurred and may occur this year, HUD has determined that PHAs, Tribes and TDHEs located in areas covered by MDDs issued during the balance of 2017 may utilize the flexibilities and expedited waiver process set out by this notice. HUD will publish a notice designating areas covered by future MDDs.

The notice is organized as follows:

- Section II describes the flexibilities that are available to MDD PHAs, where such flexibilities are built into statute and/or regulation. MDD PHAs may avail themselves of these flexibilities, following the process described in Section IV of the notice.
- Section III describes requirements of HUD's Indian programs that may be waived.
- Section IV describes certain HUD requirements that, if waived, may facilitate an MDD PHA's ability to participate in relief and recovery efforts. An MDD PHA may request a waiver of a HUD requirement not listed in Section IV and receive expedited review of the request if the MDD PHA demonstrates that the waiver is needed in order to assist in its relief and recovery efforts. An MDD PHA may not adopt any requested waiver prior to receiving HUD approval.
- Section V describes the process HUD has established for MDD PHAs to provide notice to and/or request approval from HUD regarding statutory or regulatory flexibilities and/or to request waivers of HUD requirements. Waiver requests will be handled on an expedited, case-by-case basis. Consistent with section 7(q) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), a regulated party that seeks a waiver of HUD regulations must request a waiver from HUD in writing. HUD will permit other methods of waiver transmission as necessary. The waiver request must specify the need for the waiver. Typically, the request is submitted to the HUD field office, which reviews the request and submits its recommendation to HUD headquarters. HUD headquarters then responds to the regulated party in writing. Since the damage to property and the displacement of families and individuals in the disaster areas is massive, and the need for relief from HUD requirements may be necessary, HUD will expedite the processing of waiver requests from MDD PHAs, providing for concurrent review by the HUD field office and HUD headquarters.
- Section VI States that a Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Waiver requests approved by HUD pursuant to this notice will be published in the **Federal Register** and will identify the MDD PHAs receiving such approvals.

II. Flexibilities That Are Available to MDD PHAs

HUD is exercising discretionary authority to provide relief from the requirements described in this section. Upon notification to HUD or upon HUD approval, as noted below, relief is granted to MDD PHAs. Relief from the requirements must benefit families affected by the disasters, for example by enabling MDD PHA staff to focus on relief and recovery efforts. Section IV of this notice describes the process an MDD PHA must follow to provide notification to and/or to request approval from HUD. Such notification and/or request must be made by January 4, 2018.

A. 24 CFR 905.306 (Extension of deadline for obligation and expenditure of Capital Funds). Section 9(j)(1) of the United States Housing Act of 1937 (1937 Act) requires PHAs to *obligate* Capital Funds not later than 24 months after the date on which the funds became available, or the date on which the PHA accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units, plus the period of any extension approved under section 9(j)(2) of the Act. Section 9(j)(5)(A) of the 1937 Act requires a PHA to *expend* Capital Funds not later than 4 years after the date on which the funds become available for obligation, plus the period of any extension approved under section 9(j)(2). Section 9(j)(2) of the 1937 Act authorizes the Secretary to extend the time period for the obligation of Capital Funds for such period as the Secretary determines necessary if the Secretary determines that the failure of the agency to obligate assistance in a timely manner is attributable to an event beyond the control of the PHA. The severe storms and flooding in Texas were beyond the control of MDD PHAs and caused such massive and widespread destruction and displacement that HUD is willing to extend the obligation deadline under section 9(j)(1) of the 1937 Act pursuant to section 9(j)(2)(A)(v) of the 1937 Act for an additional 12 months, upon the request of an MDD PHA. The extension of the section 9(j) obligation and extension deadlines made in this notice also applies to the implementing regulation at 24 CFR 905.306.

B. 24 CFR 984.105(d) (Family Self-Sufficiency minimum program size). 24 CFR 984.105(d) defines the circumstances under which a PHA may, upon HUD approval, operate a program that is smaller than the required program size. HUD has determined that an MDD PHA's ability to operate a program that meets the minimum program size requirements may be infeasible due to circumstances related to MDDs 4332, 4335, 4336, 4337, 4338, 4339 and/or 4340. Upon the submission to HUD of a certification (as defined in 24 CFR 984.103) and upon request by an MDD PHA, HUD will grant an exemption from the minimum program size requirement for a period of 24 months from the effective date of this notice.

C. 24 CFR 990.145(b) (Public housing dwelling units with approved vacancies). Section 990.145 lists the categories of vacant public housing units that are eligible to receive operating subsidy and are therefore considered to be ''approved vacancies.'' Under Section 990.145(b), a PHA shall receive operating subsidy for units that are vacant due to a declared disaster, subject to prior HUD approval, on a project-by-project basis. If an MDD PHA has a unit that has been vacated due to severe storms and flooding, then the MDD PHA, with HUD approval, may treat the unit as an ''approved vacancy.'' Upon the request of an MDD PHA and HUD approval, on a case-by-case basis, such units may be considered approved vacancies for a period not to exceed 12 months from the date of HUD approval.

[7] *https://www.fema.gov/disaster/4340,* designating U.S. Virgin Islands.

III. Requirements of HUD's Indian Programs That May Be Waived

HUD is exercising discretionary authority to provide relief from the requirements described in this section since the damage to property and the displacement of families and individuals is significant and the need to provide regulatory relief in many areas is readily apparent. Upon notification to HUD or upon HUD approval, as noted below, relief is temporarily granted to MDD Tribes/TDHEs. Relief from the requirements must benefit families affected by the disasters, for example by enabling MDD Tribe/TDHE staff to focus on relief and recovery efforts. To avail themselves of the waivers in this section, MDD Tribes/TDHEs must notify their Area Office of Native American Programs (AONAP) in advance of their intent to exercise the waiver, and must keep documentation on file at the Tribe/TDHE of good cause for exercising such waiver. Such notification and/or request must be made by January 4, 2018.

Indian Housing Block Grant (IHBG) Program Waivers

A. 24 CFR 1000.156 and 1000.158 (Total Development Cost (TDC) Limits). The IHBG regulations provide that affordable housing developed, acquired, or assisted under the IHBG program must be of moderate design. TDC limits are published annually to provide recipients with affordable housing cost standards. These standards can be exceeded by 10 percent with AONAP approval and can be exceeded further if Headquarters approval is obtained. A Tribe must submit a justification to HUD to increase the TDC limit of a unit or project. Due to the impact of the hurricanes and the need to expedite the rehabilitation of damaged homes, HUD has determined that there is good cause to temporarily waive these requirements to allow Tribes impacted by Hurricanes Harvey, Irma, or Maria to exceed the current TDC maximum by 20 percent without HUD review or approval if the Tribe maintains documentation that indicates that housing will be for IHBG eligible families and the design, size, and amenities are moderate and comparable to housing in the area. This requirement is waived for a period of one year from the effective date of this notice. The TDC limits can be exceeded by more than 20 percent if the Tribe receives written approval from HUD Headquarters. These requirements are also waived to permit the current TDC limits to be used for both single-family and multi-family housing.

Indian Community Development Block Grant (ICDBG) Waivers

B. 24 CFR 1003.305; 24 CFR 1003.400(a) and (b); 24 CFR 1003.401; and Section I.A.1.b of FY 2017 Indian Community Development Block Grant (ICDBG) NOFA (Application Requirements for ICDBG Imminent Threat Funds and Amending ICDBG Single Purpose Grants). These ICDBG regulations provide that applicants must: (1) Provide independent verification of the urgency and immediacy of the threat; (2) demonstrate that no other funding source is available to address the threat for which funds are requested; (3) submit the information specified in the annual ICDBG NOFA, located in Section I.A.1.b of the FY 2017 ICDBG NOFA; and (4) meet all funding criteria for ICDBG Imminent Threat grants in 24 CFR 1003, Subpart E, when requesting an amendment to use an ICDBG Single Purpose grant to address imminent threats to health and safety. Given the urgent need to address the damage from Hurricanes Harvey, Irma or Maria, and the well documented impact of the disasters, these requirements may cause unnecessary delays to recovery. Accordingly, HUD determines that there is good cause to waive 24 CFR 1003.305, 1003.400(a) and (b), 1003.401(b), and Section I.A.1.b of the FY2017 ICDBG NOFA, to the extent necessary to permit Indian Tribes located in areas affected by Hurricanes Harvey, Irma or Maria to more expeditiously request and receive ICDBG Imminent Threat grants, or to use an existing ICDBG grant to address imminent threats to health and safety. A Tribe that is seeking an ICDBG Imminent Threat grant must instead send a written request to its Area Office of Native American Programs (ONAP) describing (1) the damage caused by the disaster, (2) the amount of assistance requested to address the damage, (3) the activities that the Tribe intends to carry out with the Imminent Threat grant, and (4) certify that information on the Tribe/TDHE's plans to use ICDBG Imminent Threat or existing ICDBG funds has been published or posted for residents of the community in order to meet the alternative citizen participation requirements in Section III.D. of this Notice. This documentation need not be in writing if HUD determines that providing written documentation is impracticable. A Tribe that is seeking to use its ICDBG grant funds to address imminent threats to health and safety must also follow the process outlined above in lieu of the process outlined in these regulations and NOFA. HUD will review this information and determine whether to approve the Tribe for an ICDBG Imminent Threat grant, or to approve the Tribe's ICDBG amendment request.

C. 24 CFR 1003.604 (ICDBG Citizen Participation Requirements). The ICDBG regulations at 24 CFR 1003.604(a)(2) require applicants to consult with residents prior to submitting their funding applications. Due to the impact of Hurricanes Harvey, Irma or Maria, Indian Tribes may need to either quickly apply for an ICDBG Imminent Threat grant, or amend their existing ICDBG Single Purpose grants to address the damage from the disasters. The citizen participation requirements have the potential to delay the ability of ICDBG grantees and applicants to address the damage from the disasters. Accordingly, HUD has determined that there is good cause to temporarily waive 24 CFR 1003.604(a)(2) so that the Tribe will not have to hold one or more meetings to obtain the views of residents on disaster recovery needs. This requirement is waived for a period of one year from the effective date of this notice. Tribes will continue to be required, however, to meet the citizen participation requirements by publishing or posting information on their plans to use ICDBG Imminent Threat grant funds, or amend their ICDBG Single Purpose grant(s), and accepting and considering comments. The Tribe will be required to certify in its application for funding or for amendment that information has been published or posted for residents of the community in order to meet the citizen participation requirement.

D. Section II.A.3 of the Fiscal Year 2015, 2016 and 2017 Indian Community Development Block Grant (ICDBG) Notices of Funding Availability (Housing Rehabilitation Limits). The ICDBG NOFA places a limit on the amount grantees can spend on per unit housing rehabilitation costs. Due to the impact of Hurricanes Harvey, Irma or Maria, Tribes may need to exceed these limits for reasons including but not limited to: (1) Existing ICDBG housing rehabilitation projects may have incurred damage and rectifying that damage reasonably increases the per unit cost, (2) the disaster may have created the need for new and unplanned housing rehabilitation that is complicated and/or made more expensive by storm related damage, and (3) the cost of construction materials and labor may have increased due to increased demand in the affected areas. HUD has determined that there is good cause to waive the ICDBG housing rehabilitation limits to allow Tribes to incur costs that more fully address

disaster recovery needs. These standards can be exceeded with prior approval of the AONAP. When requesting approval from the AONAP to use this waiver flexibility, Tribes should include a statement of the scope of work and projected costs.

IV. HUD Requirements That May Be Waived

For an MDD PHA, HUD will review requests for waivers of HUD requirements on an expedited basis. This section lists requirements for which HUD anticipates receiving such requests. An MDD PHA may also request a waiver of a HUD requirement not listed in this section and receive expedited review of the request if the MDD PHA documents that the waiver is needed for relief and recovery purposes. This documentation need not be in writing if HUD determines that providing written documentation is impracticable.

HUD expects that any waiver granted pursuant to this notice will benefit families affected by the disasters, for example by enabling MDD PHA staff to focus on relief and recovery efforts.

An MDD PHA seeking a waiver of a HUD requirement listed below or of any other HUD requirement needed to assist the MDD PHA in its relief and recover efforts must submit a waiver request pursuant to the process outlined in Section IV of this notice. HUD will not approve an MDD PHA's or other recipient's request to waive a fair housing, civil rights, labor standards, or environmental requirement. The request must be submitted to HUD not later than January 4, 2018.

A. 24 CFR 5.512(d) (Verification of eligible immigration status; Secondary verification). Section 5.512 describes the process by which verification of eligible immigration status must be undertaken for families seeking assistance under certain HUD programs. In circumstances under which secondary verification must be requested, Section 5.512(d) provides a PHA with 10 calendar days from the date of receipt of the results of the primary verification to request secondary verification from Immigration and Customs Enforcement (ICE). To initiate secondary verification, 24 CFR 5.512(d)(2) requires that the PHA provide ICE with ''photocopies of the original [ICE] documents required for the immigration status declared (front and back), attached to the [ICE] document verification request form G–845S (Document Verification Request), or such other form specified by the [ICE].'' HUD is willing to consider a request from an MDD PHA to extend the timeframe for secondary verification requests to ICE to 90 calendar days, for any primary verification result received after the effective date of this notice where a secondary request is required, for a period not to exceed 12 months from the date of HUD approval.

B. 24 CFR 5.801(c) and 5.801(d)(1) (Uniform financial reporting standards; Filing of financial reports; Reporting compliance dates). Section 5.801 establishes uniform financial reporting standards (UFRS) for PHAs (and other entities). Section 5.801(c) requires that PHAs submit financial information in accordance with 24 CFR 5.801(b) annually, not later than 60 days after the end of the fiscal year of the reporting period. Section 5.801(d)(1) requires that PHAs submit their *unaudited* financial statements not later than 60 calendar days after the end of their fiscal year and that PHAs submit their *audited* financial statements not later than 9 months after the end of their fiscal year. HUD is willing to consider requests to extend these reporting deadlines. Specifically, for MDD PHAs with fiscal years ending December 31, 2016, and March 31, 2017, the deadline for submission of financial information in accordance with 24 CFR 5.801(b) and the deadline for submission of audited financial statements may be extended to 13 months. For MDD PHAs with fiscal years ending June 30, 2017, September 30, 2017, and December 31, 2017, the deadline for submission of financial information in accordance with 24 CFR 5.801(b) and the deadline for submission of unaudited financial statement may be extended to 180 calendar days, and the deadline for submission of audited financial statements may be extended to 13 months.

C. 24 CFR 902 (Public Housing Assessment System). Part 902 sets out the indicators by which HUD measures the performance of a PHA. The indicators measure a PHA's physical condition, financial condition, management operations, and Capital Fund obligation and occupancy. For an MDD PHA that has a fiscal year end of June 30, 2017, September 30, 2017, December 31, 2017, March 31, 2018, or June 30, 2018, HUD is willing to consider a request to waive the inspection and scoring of public housing projects, as required under 24 CFR 902

D. 24 CFR 905.322(b) (Fiscal closeout). Section 905.322(b) establishes deadlines for the submission of an Actual Development Cost Certificate (ADCC) and an Actual Modernization Cost Certificate (AMCC). Specifically, the ADCC must be submitted 12 months from the date of completion/termination of a modernization activity, and the AMCC must be submitted not later than 12 months from the activity's expenditure deadline. Upon request from an MDD PHA, HUD is willing to extend these deadlines by 12 months.

E. 24 CFR 905.314(b)–(c) (Cost and other limitations; Maximum project cost; TDC limit). Section 905.314(b)–(c) establishes the calculation of maximum project cost and the calculation of total development cost. In order to facilitate the use of Capital Funds for repairs and construction for needed housing in the disaster areas, HUD is willing to waive the total development cost (TDC) and housing cost cap limits for all work funded by the Capital Grant (Capital Grant Funds with undisbursed balances and HOPE VI funds) until issuance of 2018 TDC levels. MDD PHAs that request to waive this provision and receive approval to do so must strive to keep housing costs reasonable given local market conditions, based upon the provisions outlined in 2 CFR part 200.

F. 24 CFR 905.314(j) (Cost and other limitations; Types of labor). This section establishes that non-high performer PHAs may use force account labor for modernization activities only when the use of force account labor for such activities has been included in a Board-approved Capital Fund Program 5-Year Action Plan. HUD is willing to waive this requirement to allow for the use of force account labor for modernization activities even if this activity has not been included in the non-high performer MDD PHA's 5-Year Action Plan. This waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

G. 24 CFR 905.400(i)(5) (Capital Fund Formula; Limitation of Replacement Housing Funds to New Development). Section 905.400 describes the Capital Fund formula. Section 905.400(i)(5) limits the use of replacement housing funds to the development of new public housing. To help address housing needs as a result of the displacement caused by the severe storms and flooding, HUD is willing to waive 905.400(i)(5) to allow all Capital Fund Replacement Housing Factor Grants with undisbursed balances to be used for public housing modernization. This waiver will be in effect for funds obligated within 12 months from the date of HUD approval.

H. 24 CFR 960.202(c) (Tenant selection policies) and 982.54(a) (Administrative plan). Section 960.202(c)(1) provides that public housing tenant selection policies must be duly adopted and implemented. Section 982.54(a) provides that a PHA's Section 8 administrative plan must be

formally adopted by the PHA Board of Commissioners or other authorized PHA officials. For temporary revisions to an MDD PHA's public housing tenant selection policies or Section 8 administrative plan that an MDD PHA wishes to put into place to address circumstances unique to relief and recovery efforts, HUD is willing to consider requests to waive the requirements for formal approval. Any waiver request must include documentation that an MDD PHA's Board of Commissioners or an authorized MDD PHA official supports the waiver request and must identify the temporary revisions, which shall be effective for a period not to exceed 12 months from the date of HUD's approval. Additionally, any waiver request is limited to revisions that do not constitute a significant amendment or modification to the MDD PHA plan; pursuant to Section 5(A)(g) of the 1937 Act, HUD cannot waive the approval by the board or other authorized PHA officials if the proposed revision would constitute a significant amendment or modification to the PHA plan. Finally, HUD cannot waive any terms within a PHA's own plan or state law requiring the approval of the board or authorized PHA officials.

I. 24 CFR 965.302 (Requirements for energy audits). This section establishes the requirement that all PHAs complete an energy audit for each PHA-owned project under management, not less than once every 5 years. HUD is willing to consider a request for audits due to take place in FY 2017 an additional 12 months after December 31, 2016, to complete such an audit.

J. 24 CFR 982.206(a)(2) (Waiting List; Opening and closing; Public notice). This section describes where a PHA must provide public notice when it opens its waiting list for tenant-based assistance. HUD is willing to consider a request from an MDD PHA that wishes, in lieu of the requirement to provide notice in a local newspaper of general circulation, to provide public notice via its Web site, at any of its offices, and/or in a voice-mail message, for any opening of the waiting list for tenant-based assistance that occurs within a period not to exceed 12 months from the date of HUD approval. MDD PHAs that request a waiver of this requirement and receive HUD approval must consider the fair housing implications of the means by which they choose to provide public notice. For example, an MDD PHA that chooses to provide public notice at its offices must consider the impact on persons with disabilities, who may have difficulty visiting the office in-person. Similarly, an MDD PHA that chooses to provide public notice via voice-mail message must consider how it will reach persons with hearing impairments and persons with limited English proficiency. HUD maintains the requirement that an MDD PHA must also provide the public notice in minority media. Any notice must comply with HUD fair housing requirements.

K. 24 CFR 982.503(c) (HUD approval of exception payment standard amount). 24 CFR 982.503(c) authorizes HUD to approve an exception payment standard amount that is higher than 110 percent of the published fair market rent (FMR). Typically, a PHA must provide data about the local market to substantiate the need for an exception payment standard. In a natural disaster situation, however, the typical data sources fail to capture conditions on the ground. In these cases, HUD considers the most recently available data on the rental market, prior to the disaster, then estimates the number of households seeking housing units in the wake of the disaster to arrive at an emergency exception payment standard amount. HUD has decided, based on this data, that exception payment standard amounts up to 150 percent of the FMR are justified and that an MDD PHA may therefore request a waiver to establish an exception payment standard up to 150 percent of the FMR without providing supporting data. Upon approval by HUD, an exception payment standard adopted pursuant to this notice may be adopted for any Housing Assistance Payment (HAP) contract entered as of the effective date of this notice. HUD intends for these exception payment standards to remain in effect until HUD implements changes to the FMRs in the affected areas. MDD PHAs are reminded that increased per-family costs resulting from the use of exception payment standards may result in a reduction in the number of families assisted or may require other cost-saving measures for an MDD PHA to stay within its funding limitations.

L. 24 CFR 982.401(d) (Housing quality standards; Space and security). This section establishes a standard for adequate space for an HCV-assisted family. Specifically, it requires that each dwelling unit have at least 1 bedroom or living/sleeping room for each 2 persons. HUD is willing to consider a request from an MDD PHA that wishes to waive this requirement to house families displaced due to the severe storms and flooding. The waiver will be in effect only for HAPs entered into during the 12-month period following the date of HUD approval, and then only with the written consent of the family. For any family occupying a unit pursuant to this waiver, the waiver will be in effect for the initial lease term.

M. 24 CFR 982.633(a) (Occupancy of home). This section establishes the requirement that PHAs may make HAP for homeownership assistance only while a family resides in their home and must stop HAP no later than the month after a family moves out. HUD is willing to consider a request from an MDD PHA wishing to waive this requirement to allow families displaced from their homes located in areas affected by MDD(s) 4332, 4335, 4337, 4338, 4339 and/or 4340 to comply with mortgage terms or make necessary repairs. A PHA requesting a waiver of this type must show good cause by demonstrating that the family is not already receiving assistance from another source. **NOTE:** An MDD PHA that wishes in addition to request a waiver of the requirement at 982.312 that a family be terminated from the program if they have been absent from their home for 180 consecutive calendar days must do so separately.

N. 24 CFR 984.303(d) (Contract of participation; contract extension). Part 984 establishes the requirements for the Section 8 and Public Housing Family Self-Sufficiency (FSS) Program. Section 984.303(d) authorizes a PHA to extend a family's contract of participation for a period not to exceed 2 years, upon a finding of good cause, for any family that requests such an extension in writing. HUD is willing to consider a request from an MDD PHA that wishes to extend family contracts for up to 3 years, if such extensions are merited based on circumstances deriving from MDD(s) 4332, 4335, 4337, 4338, 4339 and/or 4340. Any waiver granted pursuant to this request will be in effect for requests made to the MDD PHA during a period not to exceed 12 months from the date of HUD approval.

O. 24 CFR part 985 (Section 8 Management Assessment Program (SEMAP)). Part 985 sets out the requirements by which section 8 tenant-based assistance programs are assessed. For an MDD PHA that has a fiscal year end of September 30, 2017, December 31, 2017, or March 31, 2018, HUD is willing to consider a request to carry forward the last SEMAP score received by the PHA.

P. Notice PIH 2012–10, Section 8(c) (Verification of the Social Security Number (SSN)). PHAs are required to transmit form HUD–50058 not later than 30 calendar days following receipt of an applicant's or participant's SSN documentation. HUD is willing to consider a request to extend this requirement to 90 calendar days, for a

period not to exceed 12 months from the date of HUD approval.

R. Notice PIH 2012–7, Section 9 and 4. HUD will not process a SAC application that is incomplete or deficient on a substantial item (*e.g.* supporting information required under 24 CFR 970.7(a)(1)–(17) (environmental review must still be performed)). HUD is willing to consider a request to waive this for MDD PHAs in order to allow these PHAs to apply for tenant protection vouchers (TPVs) after the submission of a SAC application based on imminent health and safety issues (in accordance with PIH Notice 2017–10).

S. 24 CFR 970.15(b)(1)(ii). For Section 18 demolition applications (and disposition applications) justified by location obsolescence, in addition to accepting an environmental review performed by HUD under 24 CFR part 50, for MDD PHAs, HUD is willing to accept an environmental review performed under 24 CFR part 58 if HUD determines the part 58 review indicates the environmental conditions jeopardize the suitability of the site or a portion of the site and its housing structures for residential use.

T. 24 CFR 970.15(b)(2) and PIH 2012–7, Section 14. For Section 18 demolition applications (and disposition applications) justified by obsolescence, HUD generally shall not consider a program of modifications to be cost-effective if the costs of such program exceed 62.5 percent of total development cost (TDC) for elevator structures and 57.14 percent of TDC for all other types of structures in effect at the time the application is submitted to HUD. In addition, HUD requires that PHAs support rehabilitation cost-estimate by a list of specific and detailed work-items identified on form HUD–52860–B and other criteria outlined in PIH Notice 2012–7, Section 14. HUD is willing to consider requests to waive these requirements if MDD PHAs submit other evidence (*e.g.* insurance adjuster reports, condemnation orders from local municipalities, photographs) that support the MDD PHA's certification that a program of modifications is not cost-effective.

U. Notice PIH 2012–7, Section 14. HUD approves Section 18 demolition applications (and disposition applications justified by physical obsolescence HUD is willing to consider requests to waive these criteria for MDD PHAs if they submit other evidence (*e.g.* insurance adjuster reports, photographs) that support the MDD PHA's certification that a program of modifications is not cost-effective.

V. Notice PIH 2017–10, Section 6(F)(2)(a). The maximum number of TPVs available to PHAs for public housing removal actions is based on the occupancy of the public housing units at the time the Section 18 demolition or disposition application is approved by HUD. If MDD PHAs have vacated units based on imminent health and safety prior to the submission of a TPV application, HUD is willing to consider making TPVs available for units that were occupied immediately prior to the disaster.

V. Notification and Expedited Waiver Process—Instructions

HUD has developed a checklist (Attachment A to this notice) that an MDD PHA must complete and submit to take advantage of the provisions identified in this notice and the expedited review of waiver requests. Each provision on the checklist indicates the documentation that must accompany the MDD PHA's submission. Each request for a waiver (Section 3 of the checklist) must include a good-cause justification stating why the waiver is needed for the PHA's relief and recovery efforts.

To complete the checklist, take the following steps:

1. Download the checklist to your computer, saving the document with the following filename: FR–5987–N–01. Your Agency's HA Code (*e.g.,* FR–5987–N–01.MI001). HUD will consider other methods of submission as needed.

2. Complete the section titled Information about Requesting Agency. This section must be complete. An official of the MDD PHA must sign where indicated. If the information about the requesting agency is incomplete or the checklist has not been signed, then the checklist will be returned without review.

3. Complete Sections 1, 2, and/or 3 of the checklist, as applicable, noting the documentation (if any) that accompanies each provision.

4. Address an email to both HUD HQ and your Field Office Public Housing Director. In the subject line, type ''Hurricane Harvey/Irma Disaster Relief.'' Email: *PIH_Disaster_Relief@hud.gov.*

5. Attach the completed checklist to your email.

6. Click ''Send.''

Checklists and any supporting documentation or information must be submitted not later than January 4, 2018. Requests submitted after January 4, 2018 will not be considered, nor will HUD consider any waiver requests submitted to this email address that are unrelated to relief and recovery efforts.

VI. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by Calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: October 3, 2017.

Dominique Blom,

General Deputy Assistant Secretary.

ATTACHMENT A

Relief from HUD Requirements Available to Public Housing Agencies to Assist with Recovery and Relief Efforts on Behalf of Families Affected by Hurricanes Harvey, Irma and Hurricane Maria

Information about Requesting Agency

NAME OF PHA:
PHA CODE:
Address:
City or Locality:
Parish:
Date of Submission: [may not be after January 4, 2018]

Signature of PHA Official: _____

Name/Title of PHA Official:
Phone number of PHA Official:

Section 1. Insert an ''X'' next to the applicable category (A, B, C or D).

___ **Category A: My agency is located in one of the counties that received a Major Disaster Declaration on August 25, 2017 [MDD 4332].** *Aransas, Bee, Brazoria, Calhoun, Chambers, Colorado, Fayette, Fort Bend, Galveston, Goliad, Hardin, Harris, Jackson, Jasper, Jefferson, Kleberg, Liberty, Matagorda, Montgomery, Newton, Nueces, Orange, Refugio, Sabine, San Jacinto, San Patricio, Victoria, Waller, Wharton*

___ **[Category B: Category B will include counties included in Major Disaster Declaration for Hurricane Irma; MDD 4335, 4336, 4337, 4338].** *St. John (Island) (County-equivalent), St. Thomas (Island) (County-equivalent), Canovanas (Municipio), Culebra (Municipio), Loiza (Municipio), Vieques (Municipio), Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler,*

Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lafayette, Lake, Lee, Levy, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, Suwannee, Union, Volusia, Camden, Chatham, Glynn, Liberty and Mcintosh.

[Category C: Category C will include counties included in Major Disaster Declaration for Hurricane Maria; MDD 4339 and 4340]. *St. Croix (Island) (County-equivalent), Aguas Buenas, Aibonito, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamón, Caguas , Canóvanas, Carolina, Cataño, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Florida, Guayama, Guaynabo, Gurabo, Humacao, Jayuya, Juana Díaz, Juncos, Las Piedras, Loíza, Luquillo, Manati, Maunabo, Morovis, Naguabo, Naranjito, Orocovis, Patillas, Ponce, Rio Grande, Salinas, San Juan, San Lorenzo, Santa Isabel, Toa Baja, Toa Alta, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, and Yabucoa.*

[Category D: Category D is for PHAs, Tribes and TDHEs located in areas covered by MDDs issued during the remainder of 2017].

Section 2. Insert an ''X'' next to the applicable flexibilities.

An MDD PHA may adopt the flexibilities listed below.

A. 42 U.S.C. 1437g(j)(1) and (j)(5)(A) (Extension of deadline for obligation and expenditure of Capital Funds.). (Office of Capital Improvements)
My agency requests that HUD extend the deadline for the obligation and expenditure of Capital Funds for an additional 12 months. We will maintain documentation substantiating the need for this extension.

B. 24 CFR 984.105 (Family Self-Sufficiency minimum program size). (Housing Voucher Management and Operations; Public Housing Management and Occupancy)
My agency submits the certification required by 24 CFR 984.103 and will operate an FSS program that is smaller than the required program size for up to 24 months from October 6, 2017.

C. 24 CFR 990.145(b) (Public housing dwelling units with approved vacancies). (REAC—Public Housing Financial Management Division)
My agency requests HUD approval to treat certain public housing units in our inventory as approved vacancies. I have attached a project-by-project listing of the units for which this approval is requested. I understand that any units that remain vacant shall be considered approved vacancies only for a period not to exceed 12 months from the date of HUD approval.

Section 3. Insert an ''X'' next to the applicable waiver requests.

An MDD PHA may request a waiver of a HUD requirement listed below or of any other HUD requirement and receive expedited review of the request, if the MDD PHA demonstrates that the waiver is needed for relief and recovery purposes. **Each request must include a good-cause justification for the waiver, documenting why the waiver is needed for such purposes.** No requested waiver may be implemented unless and until written approval from HUD has been obtained.

A. 24 CFR 5.512(d) (Verification of eligible immigration status; Secondary verification). (Housing Voucher Management and Operations; Public Housing Management and Occupancy)
My agency requests a waiver of 24 CFR 5.512(d) to extend the timeframe for secondary verification requests to Immigration and Customs Enforcement from 30 to 90 days. I understand that, if approved, this waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

B. 24 CFR 5.801(c) and 5.801(d)(1) (Uniform financial reporting standards; Filing of financial reports; Reporting compliance dates). (REAC)
My agency requests a waiver of 24 CFR 5.801(c) to extend the deadline for reporting of unaudited financial information to 180 days and of 24 CFR 5.801(d)(1) to extend the reporting deadline for audited financial information to 13 months.
For requests to waiver the deadline to report audited financial information, my agency has a fiscal year end of 12/31/16 or 3/31/17.
For requests to waiver the deadlines to report both unaudited financial information and audited financial information, my agency has a fiscal year end of 6/30/17, 9/30/17 or 12/31/17.

C. 24 CFR 902 (Public Housing Assessment System). (REAC)
My agency requests a waiver of the inspection and scoring of public housing projects, as required under 24 CFR 902. My agency has a fiscal year end of 6/30/17, 9/30/17, 12/31/17, 3/31/18, or 6/30/18.

D. 24 CFR 905.322(b) (Fiscal closeout) (Office of Capital Improvements)
My agency requests a waiver of 24 CFR 905.322(b) to extend the deadline for submission of the Actual Development Cost Certificate and the Actual Modernization Cost Certificate by 12 months.

E. 24 CFR 905.314(b)–(c) (Cost and other limitations; Maximum project cost; TDC limit). (Office of Capital Improvements)
My agency requests a waiver of 24 CFR 905.314(b)–(c), which establish the calculation of maximum project cost and total development cost limits for the Capital Fund program. I understand that this waiver is in effect only until 2018 TDC limits have been published.

F. 24 CFR 905.314(j) (Cost and other limitations; Types of labor) (Office of Capital Improvements)
My agency requests a waiver of 24 CFR 904.314(j) to allow for the use of force account labor for modernization activities even if this activity has not been included in our agency's 5-Year Action Plan. I understand that this waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

G. 24 CFR 905.400(i)(5) (Capital Fund Formula; Limitation of Replacement Housing Funds to New Development) (Office of Capital Improvements)
My agency requests a waiver of 24 CFR 905.400(i)(5) to allow for the use of Capital Fund Replacement Housing Factor grants with undisbursed balances for public housing modernization. I understand that this waiver will be in effect only for funds obligated within 12 months from the date of HUD approval.

H. 24 CFR 960.202(c) (Tenant selection policies) and 24 CFR 982.54(a) (Administrative plan). (Housing Voucher Management and Operations; Public Housing Management and Occupancy)
My agency requests a waiver of 24 CFR 960.202(c)(1) and/or 24 CFR 982.54(a) so that our public housing tenant selection policies and section 8 administrative plan may be revised on a temporary basis, without formal approval, to address circumstances unique to relief and recovery efforts. I have attached documentation that our Board of Commissioners or an authorized PHA official supports the waiver request. I have also attached documentation identifying the temporary revisions. The adoption of these revisions does not constitute a significant amendment to our PHA plan, nor does state law prevent us from adopting the revisions without formal approval. I understand that these revisions will be in effect for a period not to exceed 12 months from the date of HUD's approval.

I. 24 CFR 965.302 (Requirements for energy audits). (Public Housing Management and Occupancy)
My agency requests a waiver of 24 CFR 965.302 to provide us with an additional 12 months after December 31, 2017, to complete our audits.

J. 24 CFR 982.206(a)(2) (Waiting List; Opening and closing; Public notice). (Housing Voucher Management and Operations)
My agency requests a waiver of 24 CFR 982.206(a)(2) so that we can provide public notice of the opening of our waiting list via our Web site, at any of our offices, and/or in a voice-mail message in lieu of providing notice in a local newspaper of general circulation. I understand that this waiver is in effect for a period not to exceed 12 months from the date of HUD approval.

K. 24 CFR 982.503(c) (HUD approval of exception payment standard amount). (Housing Voucher Management and Operations)
My agency requests to establish an exception payment standard amount that is higher than 110 percent of the published fair market rent (FMR). I have attached our proposed emergency exception payment standard schedule, which shows both the dollar amounts requested and those amounts as a

percentage of the FMRs in effect at the time of the request. I understand that any approved exception payment standard will remain in effect until HUD revises the FMRs for the area. I also understand that increased per-family costs resulting from the use of such exception payment standard may result in a reduction in the number of families assisted or may require my agency to adopt other cost-saving measures.

L. 24 CFR 982.401(d) (Housing quality standards; Space and security). (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 982.401(d) so that we may allow families to occupy units that are smaller than our occupancy standards would otherwise dictate. I understand that this waiver is in effect only for HAPs entered into during the 12-month period following the date of HUD approval, and then only with the written consent of the family.

M. 24 CFR 982.633(a) (Occupancy of home). (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 982.633(a) so that we may continue HAP for homeownership for families displaced from their homes if needed to comply with mortgage terms or make necessary repairs. We have determined that the family is not receiving assistance from another source. I understand that such payments must cease if the family remains absent from their home for more than 180 consecutive calendar days.

N. 24 CFR 984.303(d) (Contract of participation; contract extension). (Public Housing Management and Occupancy; Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 984.303(d) so that a family's contract of participation may be extended for up to 3 years. I understand that such extensions may be made only during the 12-month period following the date of HUD approval.

O. 24 CFR 985.101(a) (Section 8 Management Assessment Program (SEMAP)). (Housing Voucher Management and Operations)

My agency requests a waiver of 24 CFR 985.101(a) so that our SEMAP score from the previous year may be carried over. My agency has a fiscal year end of 9/30/17, 12/31/17, or 3/31/18.

P. Notice PIH 2012–10, Section 8(c) (Verification of the Social Security Number (SSN)) (REAC)

My agency requests a waiver of section 8(c) of Notice PIH 2012–10 to allow for the submission of Form HUD–50058 90 calendars days from receipt of an applicant's or participant's SSN documentation. I understand that this waiver will be in effect for a period not to exceed 12 months from the date of HUD approval.

Q. Waivers not identified in FR–6050–N–01.

My agency seeks waivers of the HUD requirements listed below. I have included documentation justifying the need for the waivers.

Regulation	Description
Example: 24 CFR 982.54.	*Example: A waiver of this regulation will facilitate our agency's capacity to participate in relief and recovery efforts by . . .*

[FR Doc. 2017–21600 Filed 10–5–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2017–N092; FXES11120200000–178–FF02ENEH00]

Draft Environmental Assessment and Draft Habitat Conservation Plan for the San Antonio Water System's Micron and Water Resources Integration Program Water Pipelines; Bexar County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), make available the draft Environmental Assessment (dEA) for the San Antonio Water System (SAWS) draft Habitat Conservation Plan (dHCP) for construction of two water pipelines (Micron and Water Resources Integration Program (WRIP)) in Bexar County, Texas. SAWS (applicant) has applied to the Service for an incidental take permit (ITP) under the Endangered Species Act (ESA).

DATES: To ensure consideration, written comments must be received or postmarked on or before November 6, 2017.

ADDRESSES: *Availability of Documents:*

Internet: You may obtain copies of the all documents at the Service's Web site at *http://www.fws.gov/southwest/es/AustinTexas/.*

U.S. Mail: A limited number of CD–ROM and printed copies of the draft EA and draft HCP are available, by request, from Mr. Adam Zerrenner, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758–4460; telephone 512–490–0057; fax 512–490–0974. Please note that your request is in reference to the SAWS dHCP (TE 36242C–0).

The ITP application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

- *In-Person:* Copies of the dEA and dHCP are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:
  - U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102.
  - U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

Comment submission: You may submit written comments by one of the following methods:

- *Electronically:* Submit electronic comments to *FW2_AUES_Consult@fws.gov.* Please note that your request is in reference to the SAWS dHCP (TE 36242C–0).
- *By hard copy:* Mr. Adam Zerrenner, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758–4460; telephone 512–490–0057; fax 512–490–0974. Please note that your request is in reference to the SAWS dHCP (TE 36242C–0).

We request that you send comments by only the methods described above.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 or (512) 490–0057.

SUPPLEMENTARY INFORMATION:

Introduction

We, the U.S. Fish and Wildlife Service (Service), make available the draft Environmental Assessment (dEA) for the San Antonio Water System (SAWS) draft Habitat Conservation Plan (dHCP) for construction of two water pipelines (Micron and Water Resources Integration Program (WRIP)) in Bexar County, Texas. SAWS (applicant) has applied to the Service for an incidental take permit (ITP; TE 36242C–0) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA). The applicant requests a 15-year term permit to authorize incidental take of the following five federally listed karst invertebrates:

Madla's Cave meshweaver (*Cicurina madla*)
Robber Baron Cave meshweaver (*Cicurina baronia*)
Braken Bat Cave meshweaver (*Cicurina venii*)
ground beetles with no common name (*Rhadine exilis* and *Rhadine infernalis*).

The proposed take would occur within SAWS's rights-of-way (permit area) during construction of two water pipelines (by Micron and WRIP) in Bexar County, Texas, as a result of vegetation disturbance; excavation; temporary placement of excavated material; permanent placement of pipe, casings, and stabilizing materials; backfilling of excavated trenches; and restoration of surface conditions (covered activities). The permit area is 160.4 acres.

Documents Available for Review

In accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.;* NEPA), we advise the public that:

1. We have gathered the information necessary to determine impacts and formulate alternatives for the dEA related to potential issuance of an ITP to the applicant; and

2. The applicant has developed a dHCP as part of the application for an ITP, which describes the measures the applicant has agreed to take to minimize and mitigate the effects of incidental take of the covered species to the maximum extent practicable pursuant to section 10(a)(1)(B) of the ESA.

As described in the dHCP, the proposed incidental take would occur within the rights-of-way of two proposed water pipelines in Bexar County, Texas, and would result from activities associated with otherwise lawful activities.

Proposed Action

The proposed action involves the issuance of an ITP by the Service for the covered activities in the permit area, pursuant to section 10(a)(1)(B) of the ESA. The ITP would cover incidental take of the covered species associated with construction of the Micron and WRIP water pipelines within the permit area.

To meet the requirements of a section 10(a)(1)(B) ITP, the applicant has developed and proposes to implement its dHCP, which describes the conservation measures the applicant has agreed to undertake to minimize and mitigate for the impacts of the proposed incidental take of the covered species to the maximum extent practicable, and ensures that incidental take will not appreciably reduce the likelihood of the survival and recovery of these species in the wild.

The applicant proposes to mitigate with the perpetual protection, management, and monitoring of 57.6 acres of the undeveloped portion of SAWS's Anderson Pump Station, which is adjacent to the proposed pipelines.

Alternatives

Two alternatives to the proposed action we are considering as part of this process are:

1. No Action: No ITP would be issued. Under a No Action alternative, the Service would not issue the requested ITP, and SAWS would not construct the Micron and WRIP water pipelines. Therefore, the applicant would not implement the conservation measures described in the dHCP.

2. Reduced Take and Reduced Mitigation: The Reduced Take and Reduced Mitigation alternative is similar to the Proposed Action in that the Service would issue an ITP for the proposed projects. However, the HCP under this alternative would be modified to cover a reduced area of karst zone impacts and thus would subsequently reduce the amount of conservation to offset the impacts. All other aspects of the proposed project and the HCP would remain the same.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2017–21563 Filed 10–5–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2017–0059; FXIA16710900000–156–FF09A30000]

Foreign Endangered Species Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA).

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281. To locate the **Federal Register** notice that announced our receipt of the application for each permit listed in this document, go to *www.regulations.gov* and search on the permit number provided in the tables in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joyce Russell, (703) 358–2023 (telephone); (703) 358–2281 (fax); or *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA, as amended (16 U.S.C. 1531 *et seq.;* ESA), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
26612C	U.S. Centers for Disease Control and Prevention.	82 FR 28348; June 21, 2017	July 26, 2017.
19878C	Schubot Exotic Bird Health Center	82 FR 25615; June 2, 2017	July 17, 2017.
24212C	University of Alaska Fairbanks	82 FR 25616; June 2, 2017	July 27, 2017.
64163A	NH&S Holdings, LLC	82 FR 24382; May 26, 2017	July 27, 2017.
93674B	International Crane Foundation	82 FR 28348; June 21, 2017	July 28, 2017.
71315A	Arizona Tortoise Compound	79 FR 65981; November 6, 2014	February 5, 2015.

Authority: We issue this notice under the authority of the ESA, as amended (16 U.S.C. 1531 *et seq.*).

Joyce Russell,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2017–21556 Filed 10–5–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB00000.L51100000.GN0000.LVEMF 1703550.211B.17XMO#4500108947]

Notice of Availability of the Final Environmental Impact Statement for the Gold Bar Mine Project, Eureka County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Mount Lewis Field Office, Battle Mountain, Nevada, has prepared a Final Environmental Impact Statement (FEIS) for the Gold Bar Mine Project (Project) in Eureka County, Nevada, and by this Notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the FEIS for the Project and other documents pertinent to this proposal may be reviewed at the Mount Lewis Field Office: 50 Bastian Road, Battle Mountain, Nevada 89820. The document is available for download at *http://bit.ly/2gyfZms.*

FOR FURTHER INFORMATION CONTACT: Christine Gabriel—Project Manager, telephone 775–635–4000; address 50 Bastian Road, Battle Mountain, Nevada 89820; email *blm_nv_bmdo_mlfo_gold_bar_project_eis@blm.gov.* Contact Christine Gabriel to have your name added to the project mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: McEwen Mining Inc. (MMI) proposes to develop a gold mine in the southwest portion of the Roberts Mountains approximately 30 miles northwest of Eureka, Nevada. The mine plan boundary encompasses 5,362 acres of public lands and 199 acres of private lands located in Eureka County, Nevada. The proposed Project would include four open pits; waste rock dump areas (WRDAs); crushing, screening, and agglomeration facilities; heap leach pads (HLP), an associated process solution pond, and an event pond; an adsorption, desorption, and recovery (ADR) plant including barren and pregnant solution tanks; ancillary and other facilities including an explosive storage area, ammonium nitrate prill silos, liquid natural gas (LNG) Cryostorage or compressed natural gas (CNG) generators with a switch station, a truck shop and wash bay, a ready line, landfill, laydown areas, water and power infrastructure, buildings, yards, parking, storage, growth media stockpiles, production water wells (GBPW–210 and GBPW–211) and an associated water supply pipeline, groundwater monitoring wells (GBMW–01, GBMW–03, and GBMW–04), communication facilities, potable water and fire water facilities, septic systems, and fencing; and mine access roads (Three Bars Road, Atlas Haul Road, North Roberts Creek Road, Bypass Road [NVN–91566], and Roberts Creek Road). The Project would disturb 1,154 acres, including re-disturbing 420 acres of existing, non-reclaimed disturbance from a previous abandoned mining operation; 718 acres of new disturbance; and 16 acres of new disturbance as a result of exploration. Of the 1,154 acres, 185 acres would be on private land, and 969 acres would be on public land.

The proposed pit depths would not intercept groundwater. No pit dewatering would be necessary and no pit lakes are anticipated to form after mining operations end. The Final EIS, through scoping and a 45-day public comment period, has identified and analyzed impacts to the following resources areas: Water resources, air quality, vegetation resources, wildlife, grazing management, land use and access, aesthetics (noise and visual), cultural resources, paleontological resources, geological resources (including minerals and soils), recreation, social and economic values, hazardous materials, Native American cultural concerns, and wild horses. The proposed project area does not have any lands with wilderness characteristics (LWCs). The Pony Express National Historic Trail crosses existing Three Bars and North Roberts Creek Roads; however, public and recreational access to the National Historic Trail would not be affected by mining activities.

The FEIS describes and analyzes the proposed Project's direct, indirect, and cumulative impacts on all affected resources. In addition to the proposed Project, four alternatives were analyzed including the 25kV Overhead Distribution Line Alternative, the Three Bars Road/Atlas Haul Road as Only Access Alternative, the Mount Hope and North Roberts Creek Road for Light Vehicle Traffic Alternative, and the No Action Alternative. The Draft EIS was released for a 45-day public comment period, which ended April 17, 2017. A public meeting was held in Eureka, Nevada on March 22, 2017. A total of 2,178 comment letters were received from the general public, agencies, special interest groups, businesses and organizations. The FEIS responds to all comments received. These public comments resulted in the addition of clarifying text, but did not significantly change the analysis. Based on the analysis in the FEIS, the BLM has determined that the preferred alternative is the approval of the Project, with accompanying mitigation measures and voluntary applicant-committed

environmental protection measures. The BLM has used and coordinated the NEPA scoping and comment process to help fulfill the public involvement process under the National Historic Preservation Act (NHPA) (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3)—and continues to do so. The information about historic and cultural resources within the area potentially affected by the proposed Project has assisted the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Title 54 of the NHPA.

The BLM has consulted and continues to consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including potential impacts to areas of critical cultural and spiritual significance and potential impacts to cultural resources have been analyzed in the Final EIS.

Following a 30-day Final EIS availability and review period, a Record of Decision (ROD) will be issued. The decision reached in the ROD is subject to appeal to the Interior Board of Land Appeals. The 30-day appeal period begins with the issuance of the ROD.

Authority: 40 CFR 1501.7.

Joseph S. Moskiewicz,

Acting Field Manager, Mount Lewis Field Office.

[FR Doc. 2017–21599 Filed 10–5–17; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–17–048]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 16, 2017 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–480 and 731–TA–1188 (Review) (High Pressure Steel Cylinders from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission by October 31, 2017.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 4, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017–21765 Filed 10–4–17; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–17–047]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 13, 2017 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 731–TA–1186 and 1187 (Review) (Stilbenic Optical Brightening Agent from China and Taiwan). The Commission is currently scheduled to complete and file its determinations and views of the Commission by October 27, 2017.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 4, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017–21764 Filed 10–4–17; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–585–586 and 731–TA–1383–1384 (Preliminary)]

Stainless Steel Flanges From China and India

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of stainless steel flanges from China and India, provided for in subheadings 7307.21.10 and 7307.21.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the governments of China and India.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On August 16, 2017, Core Pipe Products, Inc., Carol Stream, Illinois and

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Maass Flange Corporation, Houston, Texas filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of stainless steel flanges from China and India. Accordingly, effective August 16, 2017, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation Nos. 701–TA–585–586 and antidumping duty investigation Nos. 731–TA–1383–1384 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 22, 2017 (82 FR 39914). The conference was held in Washington, DC, on September 6, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on October 2, 2017. The views of the Commission are contained in USITC Publication 4734 (October 2017), entitled *Stainless Steel Flanges from China and India: Investigation Nos. 701–TA–585–586 and 731–TA–1383–1384 (Preliminary).*

By order of the Commission.

Issued: October 2, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017–21547 Filed 10–5–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with the Section 223 (19 U.S.C. 2273) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of *August 19, 2017 through September 22, 2017.* (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or ''and,'' ''or,'' or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers' firm (or ''such firm'') have become totally or partially separated, or are threatened to become totally or partially separated;

AND (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path:

(i) The sales or production, or both, of such firm, have decreased absolutely;

AND (ii and iii below)

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased OR

(II) (aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; OR

(II) (bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased; OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; OR

(B) Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services from a Foreign Country Path:

(i)(I) There has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4));

AND

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; OR

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of

separation determined under paragraph (1).

Section 222(e)—Firms identified by the International Trade Commission

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e))must be met, by following criteria (1), (2), and (3) as follows:

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1));

OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1)of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); OR

(B) notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1) is published in the **Federal Register**;

AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); OR

(B) not withstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a) (2) (A) (Increased Imports Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
92,193	White Pine Electric Power, LLC, PM Power Group, Inc	White Pine, MI	September 9, 2015.
92,552	UTLX Manufacturing, LLC, Marmon Holdings, Inc., Berkshire Hathaway, Inc.	Alexandria, LA	January 12, 2016.
92,609	Avantor Performance Materials, LLC, Avantor Performance Materials Holdings, Kelly Services, Inc.	Phillipsburg, NJ	February 3, 2016.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services from a Foreign Country Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
92,908	SolarWorld Americans Inc., SolarWorld AG-Holding, Adecco, Randstad, Express, etc.	Hillsboro, OR	May 22, 2016.
92,955	Adient US LLC, Manpower Staffing, Malone Staffing	Auburn Hills, MI	June 13, 2016.
92,973	The Boeing Company, Boeing Commercial Aircraft, 22nd Century Technologies, Adecco US, etc.	North Charleston, SC	June 23, 2016.
93,025	Ascutney Metal Products, Inc., Spirol International Corporation, Spirol International Holding Corporation.	Windsor, VT	July 18, 2016.
93,031	Continental Traffic Service, Inc., CTSI-Global, Pridestaff	Memphis, TN	July 21, 2016.
93,040	Radio Frequency Systems Inc., RFS Holding, GmbH, Alcatel Shanghai Bell, Adecco, Westaff, A.R. Mazzotta.	Meriden, CT	July 26, 2016.
93,044	Hartford Fire Insurance Company, Ariba Unit Technology Support Team, Hartford Financial Services Group, etc.	Hartford, CT	July 27, 2016.
93,050	Ormco d/b/a Allesee Orthodontic Appliances (AOA), Ormco Corporation, Kelly Services.	Sturtevant, WI	July 31, 2016.
93,052	HARMAN International, Samsung, Aerotek, Manpower, Quantum EPM, Humanix, Spherion, Wheelhouse, etc.	Richardson, TX	August 1, 2016.
93,053	JLM Couture, Inc.	New York, NY	August 1, 2016.
93,059	International Business Machines (IBM), Watson Lab Services Delivery, 7Y Division, etc.	Littleton, MA	August 3, 2016.
93,066	Kalmar Rough Terrain Center, LLC, Cargotec	Cibolo, TX	August 7, 2016.
93,067	Metalor Technologies USA, Electrotechnics, Carol Harris Staffing, Spherion, PeopleShare, etc.	Export, PA	August 8, 2016.
93,071	National Instruments, Americas Operation Division	Austin, TX	September 16, 2016.
93,071A	Staffmark, National Instruments, Americas Operation Division.	Austin, TX	August 11, 2016.
93,078	Health Care Service Corporation, Information Technology (Infrastructure) Services.	Downers Grove, IL	August 16, 2016.
93,078A	Health Care Service Corporation, Information Technology (Infrastructure) Services.	Lombard, IL	August 16, 2016.
93,082	Heli-Tech, Inc., d/b/a Dart Aerospace	Eugene, OR	August 17, 2016.

TA–W No.	Subject firm	Location	Impact date
93,086	Convergys	Richardson, TX	August 18, 2016.
93,099	GE MDS, LLC, GE Power Division, Kelly Services	Rochester, NY	August 29, 2016.
93,111	Corpak Medsystems, Inc., Halyard Health, Kelly Services, Express Employment Professionals, etc.	Buffalo Grove, IL	September 1, 2016.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
93,046	Optimas OE Solutions, LLC, AIP	Erie, PA	July 28, 2016.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for TAA have not been met for the reasons specified.

The investigation revealed that the requirements of Trade Act section 222 (a)(1) and (b)(1) (significant worker total/partial separation or threat of total/partial separation), or (e) (firms identified by the International Trade Commission), have not been met.

TA–W No.	Subject firm	Location	Impact date
93,023	International Business Machines (IBM), Global Administration (GA), YEXO GA Assistant Department.	Littleton, MA.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both), or (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
92,996	GVL Polymer, Inc., ADP TotalSource, LSI Staffing, Aerotek Staffing.	Hesston, KS.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
91,313	American Paper Products	Totowa, NJ.	
91,735	Parker Hannifin Corporation, Hose Products Division, Prostaff.	Deerwood, MN.	
91,909	John Deere Ottumwa Works	Ottumwa, IA.	
91,989	Emerson Electric Company, White-Rodgers Division, ResourceMFG, Select Staffing.	El Paso, TX.	
91,989A	Emerson Electric Company, White-Rodgers Division, Accountemps, Aerotek, Apex, Asychrony, Belcan, etc.	St. Louis, MO.	
92,525	Protech Powder Coatings, Inc., Thermoclad Division, Protech US Holdings Inc., Kelly Services, Inc.	Erie, PA.	
92,528	Humboldt Wedag, Inc., KHD Humboldt Wedag GmbH, Aerotek.	Norcross, GA.	
92,593	Integrated Power Services, LLC	Washington, PA.	
92,893	General Mills Operations, LLC, Progresso Soup Division, General Mills, Inc.	Vineland, NJ.	
92,960	General Motors (GM), Fairfax Assembly, Development Dimensions International (DDI).	Kansas City, KS.	
92,975	T&W Forge, LLC., SIFCO Industries, Inc	Alliance, OH.	
92,991	Moventas Gears, Inc., Express Services/Express Professionals, Madden Industries, etc.	Portland, OR.	
93,006	Swagelok Technology Services Company, Swagelok Company, Legacy Staffing.	Erie, PA.	

TA–W No.	Subject firm	Location	Impact date
93,020	Meadowbrook Meat Company—Tracy, McLane Company, Inc., J.B. Hunt, Premier Warehousing, Balance Staffing.	Tracy, CA.	
93,034	Macy's Sunland Park Store	El Paso, TX.	
93,059A	International Business Machines (IBM), DG NA Digital Marketing Group, Global Digital Marketing Organization.	Cambridge, MA.	
93,064	Locke Insulators, Inc., NGK North America, Inc	Baltimore, MD.	
93,091	International Business Machines (IBM), RFS Management Services, Global Technical Services (GTS).	Smyrna, GA.	
93,094	Health Care Service Corporation, Marion Claims Front E Department, Kelly Services.	Marion, IL.	

Determinations Terminating Investigations of Petitions for Trade Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued in cases where the petition regarding the investigation has been deemed invalid.

TA–W No.	Subject firm	Location	Impact date
92,985	BJC HealthCare System	St. Louis, MO.	
93,128	Motorola, 222 Merchandise Mart Plaza	Chicago, IL.	

The following determinations terminating investigations were issued because the worker group on whose behalf the petition was filed is covered under an existing certification.

TA–W No.	Subject firm	Location	Impact date
92,905	Seagate Technology, Randstad, Tek Systems, Inc	Bloomington, MN.	
92,965	General Electric Power Conversion US, Inc., Yoh Services, Sunrise Systems, Inc., Noramtec Consultants, etc.	Pittsburgh, PA.	
93,028	TATA Consultancy Services	Midland, MI.	
93,057	Buckshot Corp., Diodes FabTech Inc., Diodes Incorporated	Lee's Summit, MO.	
93,087	Hewlett Packard Enterprise, Enterprise Services—Finance Division, Hewlett Packard Enterprise, etc.	Chicago, IL.	

The following determinations terminating investigations were issued because the petitioning group of workers is covered by an earlier petition that is the subject of an ongoing investigation for which a determination has not yet been issued.

TA–W No.	Subject firm	Location	Impact date
93,073	NORPAC Foods, Inc., Plant 7	Salem, OR.	
93,073A	NORPAC Foods, Inc., Stayton Plant, BDI Staffing	Stayton, OR.	
93,073B	NORPAC Foods, Inc., Brooks Plant	Salem, OR.	
93,109	Best Buy, Geek Squad	Richfield, MN.	

I hereby certify that the aforementioned determinations were issued during the period of *August 19, 2017 through September 22, 2017.* These determinations are available on the Department's Web site *https://www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC, this 22nd day of September, 2017.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2017–21584 Filed 10–5–17; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has

instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than October 16, 2017.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 16, 2017.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 25th day of September 2017.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[83 TAA petitions instituted between 8/19/17 and 9/22/17]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
93084	Armstrong Flooring Company (Union)	Jackson, TN	08/21/17	08/18/17
93085	Becton Dickson Medical-Pharmaceutical Systems (State/One-Stop).	Franklin Lakes, NJ	08/21/17	08/08/17
93086	Convergys (State/One-Stop)	Richardson, TX	08/21/17	08/18/17
93087	Hewlett Packard Enterprise (State/One-Stop)	Chicago, IL	08/21/17	08/18/17
93088	Human Technologies, Inc. (HTI) (State/One-Stop)	Bellwood, IL	08/21/17	08/18/17
93089	Huntington Foam LLC DBA Huntington Solutions (Workers).	Jeannette, PA	08/21/17	08/21/17
93090	Baxter Healthcare Corporation (State/One-Stop)	Englewood, CO	08/22/17	08/21/17
93091	International Business Machines (IBM) (State/One-Stop)	Smyrna, GA	08/22/17	08/22/17
93092	St. Vincent Health (State/One-Stop)	Indianapolis, IN	08/22/17	08/18/17
93093	IBM Systems & Technology (Workers)	Austin, TX	08/24/17	08/16/17
93094	Health Care Service Corporation (Workers)	Marion, IL	08/24/17	08/23/17
93095	Vesuvius USA (Company)	Tyler, TX	08/25/17	08/24/17
93096	Asurion/iQor (State/One-Stop)	Klamath Falls, OR	08/28/17	08/25/17
93097	Avery Dennison (Company)	Greensboro, NC	08/28/17	08/22/17
93098	Benchmark Electronics (Company)	Nashua, NH	08/28/17	08/28/17
93099	GE MDS, LLC (State/One-Stop)	Rochester, NY	08/29/17	08/29/17
93100	Honeywell dba Mercury Instruments (Workers)	Melbourne, FL	08/29/17	08/28/17
93101	ITT Electrofilm (State/One-Stop)	Valencia, CA	08/29/17	08/28/17
93102	Sharp Electronics Corporation of America (State/One-Stop)	Camas, WA	08/29/17	08/17/17
93103	Siemens (State/One-Stop)	Hutchinson, KS	08/29/17	08/29/17
93104	GM Orion Assembly (Union)	Lake Orion, MI	08/30/17	08/29/17
93105	M+W US Inc. (State/One-Stop)	Plano, TX	08/30/17	08/29/17
93106	New Castle Stainless Plate, LLC (Company)	New Castle, IN	08/30/17	08/14/17
93107	Quality Mold dba Versitech (Workers)	Greenwich, OH	08/30/17	08/29/17
93108	Interplex Automation (State/One-Stop)	Attleboro, MA	08/31/17	08/30/17
93109	Best Buy (State/One-Stop)	Richfield, MN	09/01/17	08/31/17
93110	Encap Technologies Inc. (Company)	Palatine, IL	09/01/17	08/31/17
93111	Corpak Medsystems, Inc. (State/One-Stop)	Buffalo Grove, IL	09/05/17	09/01/17
93112	Kongsberg Actuation, II aka Kongsberg Automotive (Company).	Easley, SC	09/05/17	09/01/17
93113	REMMCO Inc. (State/One-Stop)	North East, PA	09/05/17	09/01/17
93114	Steven Erich Hubbard Rvoc Living Trust (Company)	McMinnville, TN	09/05/17	09/04/17
93115	Great-West Financial (State/One-Stop)	Greenwood Village, CO	09/06/17	08/21/17
93116	DeVry Education Group (State/One-Stop)	Downers Grove, IL	09/06/17	09/05/17
93117	CoreLogic Solutions, LLC (State/One-Stop)	Irvine, CA	09/07/17	09/06/17
93118	GE Capital (State/One-Stop)	Norwalk, CT	09/07/17	08/24/17
93119	Lincare Inc. (Workers)	Sharon, PA	09/07/17	09/06/17
93120	Resolute Forest Products US, Inc. (Union)	Calhoun, TN	09/07/17	09/06/17
93121	Suniva, Inc. (State/One-Stop)	Norcross, GA	09/07/17	09/06/17
93122	Arconic Massena Operations (State/One-Stop)	Massena, NY	09/08/17	08/29/17
93123	Boehringer Ingelheim (State/One-Stop)	Ridgefield, CT	09/08/17	09/07/17
93124	Darian Group Incorporated (State/One-Stop)	New York, NY	09/08/17	09/05/17
93125	Railtech Composites (State/One-Stop)	Plattsburgh, NY	09/08/17	09/07/17
93126	Arvato Digital Services (Workers)	Weaverville, NC	09/11/17	09/07/17
93127	Flowserve Corporation (State/One-Stop)	Boothwyn, PA	09/11/17	09/08/17
93128	Motorola (Company)	Chicago, IL	09/11/17	09/10/17
93129	Porter's Group Sumter LLC (State/One-Stop)	Sumter, SC	09/11/17	09/08/17
93130	Siemens Inc. and Siemens Government Technologies (State/One-Stop).	Olean and Wellsville, NY	09/11/17	09/08/17
93131	Lake Catherine Footwear (State/One-Stop)	Hot Springs, AR	09/12/17	09/11/17
93132	American Made LLC dba US Liner Company (Workers)	Harmony, PA	09/12/17	09/08/17
93133	General Cable Co. (Workers)	Highland Heights, KY	09/13/17	09/06/17

APPENDIX—Continued

[83 TAA petitions instituted between 8/19/17 and 9/22/17]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
93134	HERE North America LLC (Workers)	Fargo, ND	09/13/17	09/12/17
93135	Panasonic Eco Solutions Solar America (State/One-Stop)	Salem, OR	09/13/17	09/12/17
93136	Sykes (State/One-Stop)	Eugene, OR	09/13/17	09/12/17
93137	Experian Health (State/One-Stop)	Springfield, IL	09/14/17	09/13/17
93138	Harman Professional (Company)	Elkhart, IN	09/14/17	09/13/17
93139	CDM Smith (State/One-Stop)	Boston, MA	09/14/17	09/13/17
93140	U.S. Steel Tubular Products, Inc. (Lone Star Tubular Operations) (State/One-Stop).	Lone Star, TX	09/14/17	09/13/17
93141	Lincare Inc. (State/One-Stop)	Spokane, WA	09/14/17	09/13/17
93142	GM Nameplate Inc. (State/One-Stop)	Seattle, WA	09/14/17	09/13/17
93143	GVL Polymers, Inc. (State/One-Stop)	Heston, KS	09/14/17	09/14/17
93144	HSBC Technology and Services (State/One-Stop)	Buffalo, NY	09/15/17	09/15/17
93145	Nelson Global (State/One-Stop)	Clinton, TN	09/15/17	09/14/17
93146	Southworth Paper (State/One-Stop)	Turner Falls, MA	09/15/17	09/14/17
93147	APEM, Inc. (State/One-Stop)	Haverhill, MA	09/18/17	09/18/17
93148	H.B. Fuller (State/One-Stop)	Vadnais Heights, MN	09/18/17	09/15/17
93149	Health Care Service Corporation (BCBSMT) (Workers)	Helena, MT	09/18/17	09/15/17
93150	Philips Healthcare (Workers)	Highland Heights, OH	09/18/17	09/15/17
93151	Thomson Reuters (State/One-Stop)	Boston, MA	09/18/17	09/18/17
93152	ArcelorMittal USA (State/One-Stop)	Riverdale, IL	09/19/17	09/19/17
93153	IQOR (Jabil) (Workers)	Saint Petersburg, FL	09/19/17	09/18/17
93154	US Steel (State/One-Stop)	Granite City, IL	09/19/17	09/19/17
93155	California Steel (State/One-Stop)	Fontana, CA	09/20/17	09/19/17
93156	Charter Communications (State/One-Stop)	Palm Desert, CA	09/20/17	09/11/17
93157	Nucor Corporation (State/One-Stop)	Blytheville, AR	09/20/17	09/20/17
93158	Valpak (Workers)	St. Petersburg, FL	09/20/17	09/19/17
93159	Benny's Inc. (Workers)	Esmond, RI	09/21/17	09/20/17
93160	EVRAZ—Rolling Facility (State/One-Stop)	Portland, OR	09/21/17	09/20/17
93161	ITT Aerospace Controls (Workers)	Perris, CA	09/21/17	09/20/17
93162	Lumentum LLC. (State/One-Stop)	Bloomfield, CT	09/21/17	09/14/17
93163	Johnson Controls International Plc. (Workers)	Milwaukee, WI	09/22/17	09/21/17
93164	LuLuLemon Lab (Workers)	New York, NY	09/22/17	09/15/17
93165	Rideout Health (State/One-Stop)	Marysville, CA	09/22/17	09/14/17
93166	Tyco (State/One-Stop)	Boca Raton, FL	09/22/17	09/21/17

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0026]

Curtis-Strauss, LLC: Grant of Expansion of Recognition and Modification of NRTL Program's List of Appropriate Test Standards

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 Curtis-Strauss, LLC., as a Nationally Recognized Testing Laboratory (NRTL). Additionally, OSHA announces its final decision to add a new test standard to the NRTL Program's List of Appropriate Test Standards.

DATES: The expansion of the scope of recognition becomes effective on October 6, 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.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, telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Curtis-Strauss, LLC (CSL) as a NRTL. CSL'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/otpca/nrtl/index.html.*

CSL submitted an application, dated April 7, 2016 (OSHA–2009–0026–0072), to expand its recognition to include one additional test standard, which would also be added to the NRTL Program's List of Appropriate Test Standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing CSL's expansion application in the **Federal Register** on May 23, 2017 (82 FR 23611). The Agency requested comments by June 7, 2017, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of CSL's scope of recognition.

To obtain or review copies of all public documents pertaining to CSL's application, go to: *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–2009–0026 contains all materials in the record concerning CSL's recognition.

II. Final Decision and Order

OSHA staff examined CSL'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 CSL meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the specified limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant CSL's scope of recognition. OSHA limits the expansion of CSL's recognition to testing and certification of products for demonstration of conformance to the test standard listed in Table 1 below.

TABLE 1—APPROPRIATE TEST STANDARD FOR INCLUSION IN CSL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 61010–2–010	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–010: Particular Requirements for Laboratory Equipment for the Heating of Materials.

Additionally, Table 2, below, lists the test standard new to the NRTL Program's List of Appropriate Test Standards. The Agency evaluated the standard to (1) verify it represents product categories for which OSHA requires certification by a NRTL, (2) verify the documents represent end products and not components, and (3) verify the documents define safety test specifications (not installation or operational performance specifications). Based on this evaluation, OSHA finds that this is an appropriate test standard and has added this standard to the NRTL Program's List of Appropriate Test Standards.

TABLE 2—TEST STANDARD OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 61010–2–010	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–010: Particular Requirements for Laboratory Equipment for the Heating of Materials.

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, CSL must abide by the following conditions of recognition:

1. CSL 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. CSL must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. CSL must continue to meet the requirements for recognition, including all previously published conditions on CSL'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 CSL, subject to the limitation and conditions specified above.

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 October 2, 2017.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017–21603 Filed 10–5–17; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (17–073)]

Notice of Intent To Grant Partially-Exclusive Term License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant partially-exclusive term license.

SUMMARY: NASA hereby gives notice of its intent to grant a partially exclusive term license in the United States to practice the invention described and claimed in U.S. Patent No. 8,163,972 entitled, ''Zero-Valent Metallic Treatment System and its Application for Removal and Remediation of Polychlorinated Biphenyls (PCBs),'' KSC–12878–2–CIP, to Marley Environmental, Inc., having its principal place of business in Avon, CT. Marley Environmental, Inc. has requested exclusivity for all fields of use in a limited geographic area. This area shall include EPA Region 1 (which includes the states of Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine), New York, and New Jersey.

DATES: The prospective partially-exclusive license may be granted unless NASA receives written objections, including evidence and argument, no later than October 23, 2017 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than October 23, 2017 will also be treated as objections to the grant of the contemplated exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, NASA John F. Kennedy Space Center, Mail Code CC–A Kennedy Space Center, FL 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Jonathan Leahy, Patent Attorney, Office of the Chief Counsel, NASA John F. Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899. Telephone: 321–867–6553; Facsimile: 321–867–1817.

SUPPLEMENTARY INFORMATION: This notice of intent to grant a partially-exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2017–21517 Filed 10–5–17; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Social, Behavioral and Economic Sciences (#1171).

Date and Time:

November 2, 2017; 9:00 a.m. to 5:00 p.m.

November 3, 2017; 8:30 a.m. to 1:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Room W2210/W2220, Alexandria, VA 22314.

Type of Meeting: Open.

Contact Person: Dr. Deborah Olster, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Sciences, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–8700.

Summary of Minutes: Posted on SBE advisory committee Web site at: *https://www.nsf.gov/sbe/advisory.jsp.*

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate (SBE) programs and activities.

Agenda

- SBE Directorate and Division Updates
- Graduate Training in the Behavioral and Social Sciences
- Social Science Surveys
- SBE Strategic Planning/Grand Challenges
- Science Communications
- Meeting with NSF Leadership
- Evidence-Based Policymaking
- Future Meetings, Assignments and Concluding Remarks

Dated: October 3, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017–21553 Filed 10–5–17; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Open meeting of the Executive Committee of the National Science Board, to be held Tuesday, October 10, 2017, from 2:00–3:00 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314.

STATUS: Open.

MATTERS TO BE CONSIDERED: Committee Chair's Opening Remarks; approval of Executive Committee Minutes of July 17, 2017; approval of Addendum to the Plenary Closed Minutes of the NSB Meeting of May 2017; discuss issues and topics for an agenda of the NSB Meeting scheduled for November 8–9, 2017.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: James Hamos, 2415 Eisenhower Ave., Alexandria, VA 22314. Telephone: (703) 292–8000. You may find meeting information and updates (time, place, subject matter or status of meeting) at *http://www.nsf.gov/nsb/notices/.*

SUPPLEMENTARY INFORMATION: An audio listening line will be available for the public. Members of the public must contact the Board Office to request the number by sending an email to

nationalsciencebrd@nsf.gov at least 24 hours prior to the teleconference.

Dated: October 3, 2017.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2017–21697 Filed 10–4–17; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Request for Information (RFI)—Mid-Scale Research Infrastructure

AGENCY: National Science Foundation (NSF).

ACTION: Request for Information (RFI).

SUMMARY: This Request for Information (RFI) is issued in response to the American Innovation and Competitiveness Act (AICA). NSF seeks information on existing and future needs for mid-scale research infrastructure projects from the US-based NSF science and engineering community. The AICA requires NSF to ''evaluate the existing and future needs, across all disciplines supported by the Foundation, for mid-scale projects'' and ''develop a strategy to address the needs.'' The input will be used to assess the needs for mid-scale RI from the US-based NSF science and engineering community in order to develop a strategy, in accordance with the AICA.

DATES: To be considered, submissions must be received no later than December 8, 2017.

FOR FURTHER INFORMATION CONTACT: *midscale@nsf.gov.*

SUPPLEMENTARY INFORMATION:

Definitions: For the purposes of this RFI, NSF defines Research Infrastructure (RI) as any combination of facilities, equipment, instrumentation, computational hardware and software, and the necessary human capital in support of the same. This includes upgrades to existing major research facilities. Mid-scale RI requires an investment that falls between the maximum award funded by NSF's Major Research Instrumentation Program (MRI; $4 million) and that of a major multi-user research facility project ($100 million or more), as defined in AICA.

Background: Enabling Mid-scale Research Infrastructure is one of NSF's Ten Big Ideas. Given priorities in the current budget climate, NSF has been able to fund smaller mid-scale RI projects through its individual scientific directorates. Instrumentation and equipment up to $4 million has been routinely funded through the MRI program. Large-scale RI projects have been successfully funded through the Major Research Equipment and Facilities Construction (MREFC) Account. In November 2016, the eligibility threshold for potential inclusion in the MREFC Account was lowered from approximately a $100 million Total Project Cost (TPC), *i.e.,* total cost to NSF, depending on the directorate, to a fixed $70 million TPC. This adjustment was an initial step to support potential priorities in mid-scale science and infrastructure.

Objective: The purpose of this RFI is to assess the needs for mid-scale RI from the US-based NSF science and engineering community in order to develop a strategy, in accordance with the AICA. The AICA requires NSF to ''evaluate the existing and future needs, across all disciplines supported by the Foundation, for mid-scale projects'' and ''develop a strategy to address the needs.'' *This RFI focuses on mid-scale research infrastructure projects with an anticipated NSF contribution of between $20 million and $100 million towards construction and/or acquisition.* This range is of primary interest to NSF as it will help us anticipate the potential impact of lowering the MREFC threshold as well as identifying promising projects that remain difficult to address within program budgets due to the comparatively large investment needed in a relatively short period of time. After the submission period ends, and the information is analyzed, NSF will summarize the high-level insights drawn from this analysis for the science community and internal NSF use. Please note that funding for mid-scale RI projects in this range of investment has not been identified; nor does this RFI imply an intent on the part of NSF to issue a call for proposals. In addition, responses to this RFI do not constitute any commitment on behalf of the submitters or their institutions to submit a proposal or carry out an RI project.

What We Are Looking For: Submissions should identify ideas for mid-scale RI projects in the following format:

1. Concept title and description. The description should include the potential for any inter-agency or international partnerships and contributions that are part of the TPC;

2. Point of contact (in case additional clarification is needed);

3. Contact of your Authorized Organizational Representative. Note, this contact will receive a copy of the survey submission;

4. New, transformative science or scientific breakthroughs to be enabled by project;

5. Evidence of research community support (list of reports, decadal surveys, other publications);

6. Rough order of magnitude TPC (fully loaded, *i.e. inclusive* of indirect and/or Facility and Administration costs) with a percentage breakdown by the following major budget categories: (1) Physical components including structures, equipment, instrumentation, and hardware; (2) other computational resources, including software and firmware; and (3) human capital;

7. Concept of operations: anticipated duration and level of federal and non-federal support.

Who should respond:

Researchers, users, and leaders at U.S. based colleges and universities as well as non-profits who are well positioned to advance and support a mid-scale project throughout its lifecycle.

How should you respond:

To submit your concept, please use this link: *https://www.surveymonkey.com/r/midscale_2017* and complete the online questionnaire no later than December 8, 2017. Please use the email contact field provided to enable a courtesy copy of your response to your Authorized Organizational Representative or institutional leadership to ensure institutional awareness of your submission.

What We Will Do with the Information: All information submitted is subject to the Privacy Act. Summary information would be presented in aggregate form as part of the high-level analysis shared publicly.

Dated: October 3, 2017.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2017–21608 Filed 10–5–17; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0094]

Agreement State Program Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision to policy statement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has revised and consolidated two policy statements on the NRC's Agreement State Programs: The ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' and the ''Statement of Principles and Policy for the Agreement

State Program.'' The resulting single policy statement has been revised to add that public health and safety includes physical protection of agreement material [1] and to reflect comments received from Agreement States, individuals, and the Organization of Agreement States (OAS).

DATES: This policy statement is effective on October 6, 2017.

ADDRESSES: Please refer to Docket ID NRC–2016–0094 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0094. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The Agreement State Program Policy Statement, in its entirety, is in the attachment to this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Lance Rakovan, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2589, email: *Lance.Rakovan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' (62 FR 46517; September 3, 1997) presented the NRC's policy for determining the adequacy and compatibility of Agreement State programs. The ''Statement of Principles and Policy for the Agreement State Program'' (62 FR 46517; September 3, 1997) described the respective roles and responsibilities of the NRC and the States in the administration of programs carried out under the 274b. State Agreement.[2] The application of these two policy statements has significant influence on the safety and security of agreement material and on the regulation of the more than 20,000 Agreement State and NRC materials licensees, commonly referred to as National Materials Program (NMP) licensees.

The NRC staff's current efforts to update the Agreement State policy statements began with the Commission's direction provided in the staff requirements memorandum (SRM) to SECY–10–0105, ''Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device (RIN 3150–AI33),'' issued on December 2, 2010 (ADAMS Accession No. ML103360262). The Commission directed the NRC staff to update the Commission's ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' and associated guidance documents to include both safety and source security considerations in the compatibility determination process. Because Agreement State adequacy and compatibility are closely linked to the Integrated Materials Performance Evaluation Program (IMPEP),[3] which is a key component of the Commission's ''Statement of Principles and Policy for the Agreement State Program,'' both policy statements were revised concurrently. Both policy statements were updated to add that public health and safety includes physical protection of agreement material. Two working groups, composed of NRC staff and Agreement State representatives, developed the revisions to the policy statements. The draft revisions to the two policy statements were provided to the Commission on August 14, 2012 (SECY–12–0112, ''Policy Statements on Agreement State Programs'' (ADAMS Accession No. ML12110A183)).

The Commission approved publication of the draft revisions to the policy statements for public comment in the revised SRM to SECY–12–0112, dated May 28, 2013 (ADAMS Accession No. ML13148A352). The NRC staff published the two proposed policy statements on June 3, 2013 (78 FR 33122), for a 75-day comment period. After receiving requests from the Organization of Agreement States (OAS) and the State of Florida to extend the public comment period, the NRC extended the comment period to September 16, 2013 (78 FR 50118; August 16, 2013). The NRC held two public meetings (July 18 and August 6, 2013) and a topical session during the OAS annual meeting in Reno, Nevada, on August 28, 2013. The NRC staff specifically solicited comment on Compatibility Category B, and whether or not the policy statements should maintain the language from the 1997 ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' describing the adoption and number of compatible regulations.

The NRC staff received 13 submissions from commenters including Agreement States, industry organizations, and individuals. These submissions contained 51 comments on the policy statements in general and 45 comments on Compatibility Category B. The need for consistent application and flexible implementation of the NRC's policies was the underlying theme expressed by the Agreement States in the written comments as well as during the public meetings and the OAS topical session. Some commenters provided general remarks and addressed specific sections of the policy statements. Some commenters also expressed concern that the inconsistent use of terms (*e.g.,* material versus agreement material, enhanced security measures versus physical protection of agreement material, and relinquishing the NRC's authority versus discontinuing the authority) could cause confusion. Regarding Compatibility Category B, the comments show a wide variation on the interpretation of the definition of Compatibility Category B. The NRC staff considered the written comments, input from attendees at the two public meetings, and comments received at the OAS topical session and made modifications to the policy statements to ensure terms are used appropriately.

[1] The term ''agreement material'' means the materials listed in Subsection 274b. of the Atomic Energy Act of 1954, as amended (AEA), over which the States may receive regulatory authority.

[2] Section 274 of the AEA provides a statutory basis under which the NRC discontinues portions of its regulatory authority to license and regulate byproduct materials; source materials; and quantities of special nuclear materials under critical mass. The mechanism for the transfer of the NRC's authority to a State is an agreement signed by the Governor of the State and the Chairman of the Commission, in accordance with Subsection 274b. of the AEA.

[3] The NRC, in cooperation with the Agreement States, developed the IMPEP to evaluate the adequacy and compatibility of Agreement State programs and the adequacy of the NRC's nuclear materials program activities.

The NRC staff's disposition of these comments was presented in a comment resolution table (ADAMS Accession No. ML14073A549) associated with the June 3, 2013, **Federal Register** notice (78 FR 33122).

In COMSECY–14–0028, ''Agreement State Program Policy Statements: Update on Recent Activities and Recommendations for Path Forward,'' dated July 14, 2014 (ADAMS Accession No. ML14156A277), the NRC staff proposed consolidating the two policy statements in a single policy statement. The Commission approved this plan in the SRM to COMSECY–14–0028, dated August 12, 2014 (ADAMS Accession No. ML14224A618). Accordingly, the NRC staff developed a proposed single consolidated policy statement that: Identified and eliminated redundant language between the two policy statements, removed detailed information on IMPEP and the ''Principles of Good Regulation'' (ADAMS Accession No. ML15083A026), added context to make the proposed policy statement clearer and more consistent with other recent NRC policy statements, and added a description of the NMP.

The Commission approved publication of the proposed consolidated Agreement State Program Policy Statement for public comment in the SRM to SECY–15–0087, dated March 22, 2016 (ADAMS Accession No. ML16082A514). The NRC staff published the proposed Agreement State Program Policy Statement on June 2, 2016 (81 FR 35388), for a 75-day public comment period. The NRC staff also held two public webinars during the comment period. The NRC staff received 31 comments from commenters including Agreement States and the OAS.

The final policy statement is included in its entirety in the attachment to this document.

II. Overview of Public Comments

The 31 comments received in response to the **Federal Register** notice of June 2, 2016 (81 FR 35388), were considered in developing the final policy statement along with 131 comments that were received from the Agreement States when the policy statements were consolidated. The comments generally fell within the following categories: The consolidation of two policy statements and NRC's unilateral decision to consolidate; the definition and description of adequacy and compatibility; the use of ''NRC'' and ''Commission;'' the use of the terms ''relinquish'' authority versus ''discontinue'' authority; the use of the terms ''shall,'' ''will,'' or ''must'' versus ''should;'' the addition of ''significant'' to ''cross jurisdictional;'' and deletion of the section on the Principles of Good Regulation. Commenters provided additional comments that did not fall within those categories as well as comments that were out of scope of the Agreement State Program Policy Statement. The NRC staff's disposition of the 162 comments is presented in a comment resolution table (ADAMS Accession No. ML17044A406). The following sections summarize the comments organized in the categories previously noted, and include the NRC's response to the comments.

A. Consolidation of Two Policy Statements and the NRC's Unilateral Decision To Consolidate

Comment: Some commenters opposed the consolidation of the two policy statements—the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' and the ''Statement of Principles and Policy for the Agreement State Program''—into a single consolidated policy statement citing the following reasons: (1) The statements address unique topics (operational goals of a regulatory program vs. review of a regulatory program); (2) the splitting up and redistribution of the two policy statements' sections result in changes in the emphasis and relationship of both policy statements, both within each policy, and to each other; and (3) there are only five sentences that are common to both policy statements, which is not indicative of a great amount of redundancy. Multiple commenters believed that the NRC made a unilateral decision to combine the two policy statements into a single consolidated policy statement without input from the Agreement State working group members who worked on the individual policies. One commenter stated an expectation for the NRC to involve Agreement State working group members in all aspects of working group projects to ensure that documents adequately address issues of the Agreement States as well as the NRC. Four commenters stated that unilateral action by the NRC damages trust and the relationship between the NRC and the Agreement States. Three of the five commenters cited NRC Management Directive 5.3, ''Agreement State Participation in Working Groups'' (*https://scp.nrc.gov/procedures.html*) and noted that the combined policy was not cooperatively developed.

Response: Two working groups composed of NRC (headquarters and regional) staff and Agreement State representatives developed revisions to these two policy statements. In COMSECY–14–0028, the NRC staff proposed a plan to consolidate the two policy statements into a single policy statement, while preserving the work already completed by the two working groups to update the separate policy statements. One of the factors leading to the recommendation for a single policy statement was the identification, by the NRC, of redundant language between the two policy statements. The Commission approved this plan in the SRM to COMSECY–14–0028. The NRC staff consolidated the two Agreement State Program policy statements into a single policy statement and removed the IMPEP and Principles of Good Regulation details and redundancies. In 2014, the NRC staff provided the draft consolidated policy statement to Agreement States. Some expressed dissatisfaction over not being more engaged in the decision and process used to propose consolidation of the policy statements. The content revisions that were developed by the two NRC/Agreement State working groups during their work on the two separate policy statements were considered during the development of the consolidated policy statement. Additionally, the final Agreement State Program Policy Statement reflects comments received from the Agreement States subsequent to the consolidation of the two policy statements.

B. Definition and Description of Adequacy and Compatibility

Comment: Several commenters requested that adequacy and compatibility be better defined throughout the Agreement State Program Policy Statement and that a greater emphasis be placed on public health and safety.

Response: Corresponding changes were implemented throughout the Agreement State Program Policy Statement, as appropriate, for consistency with the intent of the AEA. These include revisions in Section C., ''Statement of Legislative Intent,'' of the policy statement.

C. Use of ''NRC'' and ''Commission''

Comment: Several commenters recommended replacing ''NRC'' with ''Commission'' or vice versa in various sections throughout the policy statement.

Response: The definition of ''Commission'' was added as a footnote in the policy statement to mean the five Commissioners, and the ''NRC'' indicates the U.S. Nuclear Regulatory Commission as an agency.

Corresponding changes were implemented throughout the Agreement State Program Policy Statement.

D. Use of the Terms ''relinquish'' Authority Versus ''discontinue'' Authority

Comment: Several commenters stated the use of the word ''relinquish''—in the context of the NRC's regulatory authority when entering into an agreement—is not accurate and recommended changing ''relinquish'' to ''discontinue'' throughout the policy statement so the wording is consistent with Section 274b. of the AEA.

Response: All instances of the word ''relinquish'' have either been deleted or replaced with the word ''discontinue'' throughout the Agreement State Program Policy Statement.

E. Use of the Terms ''shall,'' ''will,'' or ''must'' Versus ''should''

Comment: Multiple commenters suggest that ''shall,'' ''will,'' or ''must'' should replace ''should'' or vice versa in various sections throughout the Agreement State Program Policy Statement.

Response: Corresponding changes were implemented throughout the Agreement State Program Policy Statement, as appropriate, for consistency with language used in Section 274b. of the AEA or other sections of the policy statement.

F. Add ''significant'' to ''cross jurisdictional''

Comment: Several commenters suggest that the term ''significant'' should be added before ''cross jurisdictional'' for Compatibility Category B program elements.

Response: The NRC/Agreement State working group for the revision of the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' carefully considered the use of the term ''significant'' and concluded that the term was ambiguous and should not be included as part of the description of Compatibility Category B. The term ''cross jurisdictional program elements'' was chosen to make the description of Compatibility Category B concise and well-defined. No change was made to the Agreement State Program Policy Statement as a result of these comments.

G. Deletion of Principles of Good Regulation

Comment: A number of commenters recommended the deletion of Section D.1.i, ''Principles of Good Regulation,'' of the policy statement.

Response: The Principles of Good Regulation were initially adopted by the Commission in 1991 to serve as a guide to NRC decisionmaking and employee conduct. In 1997, they were included in the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' and the ''Statement of Principles and Policy for the Agreement State Program'' and were recognized as part of a common culture that the NRC and Agreement States share as co-regulators. These principles have served as a foundation for good regulation in the NMP and are included in the Agreement State Program Policy Statement to indicate their importance and that they should continue to form the basic building blocks for good regulation in the NMP into the future.

No change was made to the Agreement State Program Policy Statement as a result of these comments.

H. Category Health and Safety

Comment: A number of commenters noted that Category Health and Safety (H&S) was removed from the policy statement and recommended that Category H&S be included.

Response: In the proposed policy statement, Category H&S was removed from Section E.2. ''Compatibility.'' This section of the policy describes the program elements required for compatibility. Program elements required for H&S are not required for compatibility. Section E.1. ''Adequacy'' of the proposed policy statement was made implicit for Category H&S by indicating that an adequate program includes those program elements necessary to maintain an acceptable level of protection of public health and safety. Because Category H&S is one of six categories (A, B, C, D, NRC, and H&S) that forms the basis for evaluating and classifying NRC program elements, a corresponding edit was implemented in Section E.1. ''Adequacy'' of the policy statement.

III. Procedural Requirements

Congressional Review Act Statement

This final Agreement State Program Policy Statement is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Paperwork Reduction Act Statement

This Policy Statement contains voluntary guidance for information collections subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections are mandatory for states seeking to assume or maintain independent regulatory authority under Section 274 of the Atomic Energy Act of 1954, as amended. These information collections were approved by the Office of Management and Budget (OMB), under control number 3150–0183. The estimated annual burden for new Agreement State applications is 2,750 hours, to maintain Agreement State status is 7,600 hours, and to participate in IMPEP reviews is 36 hours. Send comments regarding this information collection to the Information Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by email to *Infocollects.Resource@nrc.gov,* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0183) Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

Dated at Rockville, Maryland, this 2nd day of October 2017.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary for the Commission.

[FR Doc. 2017–21542 Filed 10–5–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0001]

Sunshine Act Meeting Notice

DATES: Weeks of October 9, 16, 23, 30, November 6, 13, 2017.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 9, 2017

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.

Week of November 13, 2017—Tentative

There are no meetings scheduled for the week of November 13, 2017.

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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.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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Dated: October 4, 2017.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2017–21755 Filed 10–4–17; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81797; File No. SR–ICC–2017–012]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to ICC's Liquidity Risk Management Framework and ICC's Stress Testing Framework

October 2, 2017.

I. Introduction

On August 22, 2017, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–ICC–2017–012) to amend the ICC Liquidity Risk Management Framework and the ICC Stress Testing Framework. The proposed rule change was published for comment in the **Federal Register** on August 31, 2017.[3] The Commission received no comment letters regarding the proposed change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

In connection with clearing Single Name (''SN'') credit default swaps (''CDS'') referencing ICC Clearing Participants (''CPs''), ICC has proposed changes to its Stress Testing Framework and Liquidity Risk Management Framework, which ICC believes will enhance its stress testing and liquidity stress testing practices. The proposed rule change would expand the stress test scenarios that ICC considers to be extreme but plausible by incorporating additional losses related to the expected loss given default of all names not explicitly assumed to enter a state of default in a CP's portfolio.[4] The proposed change would similarly amend the stress scenarios described in ICC's Liquidity Risk Management Framework, which ICC stated is necessary to ensure consistency across its documents.[5] The proposed change would also incorporate an enhanced analysis of profits and losses (''P/L'') arising out of General Wrong-Way Risk (''GWWR'') generated by SNs in the Banking and Sovereign sectors.[6] Further, the proposed change would clarify ICC's current view that certain GWWR and contagion stress scenarios are extreme, but not plausible, and that such scenarios would be reviewed for informational purposes only.[7]

The proposed change would enhance ICC's guaranty fund sizing process by adding a new sensitivity analysis. This new analysis would contemplate the default of three CP SNs and two non-CP SNs. This analysis would be in addition to the current sizing approach, which contemplates the default of two CP SNs and three non-CP SNs. While not immediately requiring the collection of additional resources, ICC stated that the proposed change could provide a potential remedy where deficiencies are identified in ICC's current sizing methodology.[8]

ICC also proposes to add an interest rate sensitivity analysis in order to comply with CFTC Regulation 17 CFR 39.36. The proposed interest rate sensitivity analysis would shock the Euro and USD interest rate curves up and down to see which scenario would lead to further erosion of ICC's guaranty fund. ICC stated that this analysis would have no impact on its guaranty fund sizing methodology.[9]

The proposed change also includes amendments to ICC's approach to Specific Wrong-Way Risk (''SWWR'') P/L to expand the SWWR P/L to incorporate losses arising in connection with defaulting CP specific exposures, and also adds a description of ICC's current client stress testing practices. ICC stated that these changes were proposed for consistency with specific CFTC regulations.[10]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [11] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.

Section 17A(b)(3)(F) [12] of the Act requires, *inter alia,* that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency, or for which it is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 81486 (August 25, 2017), 82 FR 41454 (August 31, 2017) (SR–ICC–2017–012) (''Notice'').

[4] Notice, 82 FR at 41455.

[5] Notice, 82 FR at 41455–56.

[6] Notice, 82 FR at 41455.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] 15 U.S.C. 78s(b)(2)(C).

[12] 15 U.S.C. 78q–1(b)(3)(F).

responsible. Rule 17Ad–22(b)(3) [13] requires, *inter alia,* that a registered clearing agency acting as a central counterparty for security-based swaps shall establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a central counterparty for security-based swaps.

The Commission finds that the proposed rule change, which enhances ICC's Stress Testing Framework and Liquidity Risk Management Framework, is consistent with section 17A [14] of the Act and Rule 17Ad–22 [15] thereunder. As noted above, in response to the clearing of SN CDS referencing CPs, the proposed change would expand the range of stress tests that ICC considers to be extreme but plausible. The Commission has reviewed the Notice and ICC's rules, policies, and procedures, and believes that the expanded range of extreme but plausible scenarios, supplemented by the information that will be provided by certain additional GWWR and contagion stress scenarios considered to be extreme but implausible, enhance ICC's processes for estimating the amount of financial resources ICC should collect.

Additionally, while adoption of the sensitivity analyses described above will not immediately require ICC to collect additional financial resources, it will provide ICC with additional risk management information. Further, ICC stated that at least in some cases, one of the newly added analyses could provide a potential remedy where deficiencies are identified in ICC's current sizing methodology.[16] Consequently, the Commission believes that the proposed rule change is reasonably designed to ensure that ICC maintains sufficient financial resources in accordance with the requirements of Rule 17Ad–22(b)(3) and will thereby enhance ICC's ability to safeguard the securities and funds of CPs in the event of participant defaults. As a result, the Commission finds that the proposed change is consistent with the requirements of section 17A of the Act and the relevant provisions of Rule 17Ad–22.

IV. Conclusion

It is therefore ordered pursuant to section 19(b)(2) of the Act that the proposed rule change (SR–ICC–2017–012) be, and hereby is, approved.[17]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21540 Filed 10–5–17; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 240.17Ad–22(b)(3).

[14] 15 U.S.C. 78q–1.

[15] 17 CFR 240.17Ad–22.

[16] Notice, 82 FR at 41455.

[17] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81791; File No. SR–NYSE–2017–50]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Permit Affiliated Member Organizations That Are Supplemental Liquidity Providers

October 2, 2017.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 25, 2017, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to permit affiliated member organizations that are Supplemental Liquidity Providers (''SLPs'') on the Exchange to obtain the most favorable rate when (1) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities, and (2) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered and non-tiered rates. The Exchange proposes to implement the proposed changes on September 25, 2017.[4] The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to permit affiliated member organizations that are SLPs on the Exchange to obtain the most favorable rate when (1) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities, and (2) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered and non-tiered rates.

The proposed changes would be applicable to all SLP transactions, regardless of price of the security.

The Exchange proposes to implement these changes to its Price List effective September 25, 2017.

Proposed Rule Change

SLPs are eligible for certain credits when adding liquidity to the Exchange. The amount of the credit is currently determined by the ''tier'' for which the SLP qualifies, which is based on the SLP's level of quoting and ADV of liquidity added by the SLP in assigned securities.

Currently, SLP Tier 3 provides that when adding liquidity to the NYSE in securities with a share price of $1.00 or more, an SLP is eligible for a credit of $0.0023 per share traded if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B and (2) adds liquidity for all assigned SLP securities

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Price List on August 31, 2017 (SR–NYSE–2017–46), withdrew such filing on September 13, 2017, and refiled the same day (SR–NYSE–2017–48). SR–NYSE–48 [sic] was subsequently withdrawn and replaced by this filing.

in the aggregate [5] of an ADV of more than 0.20% of NYSE consolidated ADV (''CADV''),[6] or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a),[7] more than 0.20% of NYSE CADV after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. The SLP Tier 3 credit in the case of Non-Displayed Reserve Orders is $0.0006.

SLP Tier 2 provides that an SLP adding liquidity in securities with a per share price of $1.00 or more is eligible for a per share credit of $0.0026 if the SLP: (1) Meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.45% of NYSE CADV, or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a), more than 0.45% of NYSE CADV after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month.[8] The SLP Tier 2 credit in the case of Non-Displayed Reserve Orders is $0.0009.

SLP Tier 1A provides that an SLP adding liquidity in securities with a per share price of $1.00 or more is eligible for a per share credit of $0.00275 if the SLP: (1) Meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all for assigned SLP securities in the aggregate of an ADV of more than 0.60% of NYSE CADV, or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a), more than 0.60% after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. The SLP Tier 1A credit in the case of Non-Displayed Reserve Orders is $0.00105.

SLP Tier 1 provides that an SLP adding liquidity in securities with a per share price of $1.00 or more is eligible for a per share credit of $0.0029 if the SLP: (1) Meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all for assigned SLP securities in the aggregate of an ADV of more than 0.90% of NYSE CADV, or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a), more than 0.90% after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. The SLP Tier 1 credit in the case of Non-Displayed Reserve Orders is $0.0012.

Finally, a SLP adding liquidity in securities with a per share price of less than $1.00 is eligible for a per share credit of $0.0005 if the SLP: (1) Meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all for assigned SLP securities in the aggregate of an ADV of more than 0.22% of NYSE CADV in the applicable month.

The Exchange proposes to amend the Price List to permit affiliated member organizations that are SLPs to obtain the most favorable rate when (1) at least one affiliate satisfies the quoting requirements for SLPs in assigned securities, and (2) the combined SLPs' aggregate volumes satisfy the adding liquidity volume requirements for SLP tiered (*i.e.,* SLP Tier 1, SLP Tier 1A, SLP Tier 2 and SLP Tier 3) and non-tiered rates.

To effect this change, for each of the SLP tiered and non-tiered rates, the Exchange proposes to: (i) Replace the phrase ''Credit per share—per transaction—for SLPs'' with the phrase ''Credit per share—per transaction for affiliated SLPs;'' (ii) add a footnote that provides that affiliated member organizations that are SLPs would be eligible for the most favorable rate for any such security traded in an applicable month provided that one or both affiliated member organizations request and are approved for aggregation of eligible activity pursuant to the requirements set forth in the Price List; (iii) replace the phrase ''the SLP,'' with the phrase ''an SLP;'' and (iv) add the phrase ''or an affiliated'' before the term ''member organization.'' [9]

In order to qualify as affiliates for purposes of obtaining the more favorable rate and aggregating the adding liquidity of an ADV volumes, one or both member organizations that are SLPs would be required to follow the procedures set forth in the Price List for requesting that the Exchange aggregate its eligible activity with the eligible activity of its affiliates.[10]

For example, assume a member organization with a SLP (SLP1) is affiliated with another member organization that also has a SLP (SLP2). If the adding liquidity for all for assigned SLP securities is 0.40% of NYSE CADV for SLP1 in the billing month and 0.10% of NYSE CADV for SLP2, the combined adding liquidity for SLP1 and SLP2 would be 0.50% of NYSE CADV, and both SLP1 and SLP2 would meet the 0.45% NYSE CADV adding requirement. If in that same billing month, SLP1 has 8.0% quoting in SLP symbol XYZ and SLP2 has 12.0% quoting in that same symbol XYZ, both SLP1 and SLP2 would qualify for the SLP Tier 2 credit of $0.0026 in symbol XYZ, by way of SLP2's 12.0% quoting and the combined adding liquidity of SLP1 and SLP 2 of 0.50% of NYSE CADV. If SLP2 did not quote in symbol XYZ at least 10%, then SLP1 would not qualify for the SLP Tier 2 credit due to their 8.0% quoting being short of the 10% requirement, and then SLP1 and SLP2 would instead receive the applicable non-Tier Adding Credit, Tier 3 Adding Credit, Tier 2 Adding Credit or Tier 1 Adding Credit.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and

[5] Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization (''SLP-Prop'') or a registered market maker at the Exchange (''SLMM''). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

[6] NYSE CADV is defined in the Price List as the consolidated average daily volume of NYSE-listed securities.

[7] Rule 107B(i)(2)(A) prohibits a DMM from acting as a SLP in the same securities in which it is a DMM.

[8] In determining whether an SLP meets the requirement to add liquidity in the aggregate of an ADV of more than 0.20% depending on whether the SLP is also a DMM, the SLP may include shares of both an SLP-Prop and an SLMM of the same member organization.

[9] The Exchange also proposes to add a hyphen between ''SLP'' and ''Prop'' following ''quotes of an'' in the SLP Tier 2 fee.

[10] For purposes of applying any provision of the Exchange's Price List where the charge assessed, or credit provided, by the Exchange depends on the volume of a member organization's activity, a member organization may request that the Exchange aggregate its eligible activity with activity of such member organization's affiliates. A member organization requesting aggregation of eligible affiliate activity is required to (1) certify to the Exchange the affiliate status of member organizations whose activity it seeks to aggregate prior to receiving approval for aggregation, and (2) inform the Exchange immediately of any event that causes an entity to cease being an affiliate.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) & (5).

other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is reasonable because the SLP credit rates, established in previous rule filings, would remain the same.[13] The Exchange further believes that the proposed rule change is equitable because it establishes a manner for the Exchange to treat affiliated member organizations that are approved as SLPs for purposes of assessing charges or credits that are based on volume. The provision is also equitable because all member organizations seeking to aggregate their activity are subject to the same parameters, in accordance with established procedures set forth on the Price List regarding aggregation across affiliated member organizations.

The Exchange further believes that the proposal is not unfairly discriminatory because it would serve to reduce disparity of treatment between member organizations with regard to the pricing of different services and reduce any potential for confusion on how SLP activity can be aggregated. The Exchange believes that the proposed rule change avoids disparate treatment of member organizations that have divided their various business activities between separate corporate entities as compared to member organizations that operate those business activities within a single corporate entity. The Exchange further believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it aligns how affiliated member organizations that are approved as SLPs may aggregate volume in the same manner that affiliated member organizations currently aggregate non-SLP trading volume.

The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the proposed rule change is designed to encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [15] of the Act and subparagraph (f)(2) of Rule 19b–4 [16] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [17] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2017–50 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–NYSE–2017–50. 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

[13] *See, e.g.,* Securities Exchange Act Release No. 77604 (April 13, 2016), 81 FR 23043 (April 19, 2016) (SR–NYSE–2016–29), for the most recent pricing changes applicable to SLPs.

[14] 15 U.S.C. 78f(b)(8).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(2)(B).

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–NYSE–2017–50 and should be submitted on or before October 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21535 Filed 10–5–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81795; File No. SR–MRX–2017–18]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing of Proposed Rule Change To Adopt New Corporate Governance and Related Process Similar to Those of the Nasdaq Exchanges

October 2, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 19, 2017, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change (the ''Proposed Rule Change'') in connection with the proposed merger (the ''Merger'') with a newly-formed Delaware limited liability company under the Exchange's ultimate parent, Nasdaq, Inc., resulting in the Exchange as the surviving entity. Following the Merger, the Exchange's board and committee structure, and all related corporate governance processes, will be harmonized with that of the three other registered national securities exchanges and self-regulatory organizations owned by Nasdaq, Inc., namely: The NASDAQ Stock Market LLC (''NSM''), NASDAQ PHLX LLC (''Phlx''), and NASDAQ BX, Inc. (''BX'' and together with NSM and Phlx, the ''Nasdaq Exchanges'').

In connection with the Merger and as discussed more fully below, the Exchange proposes to adopt new organizational documents that set forth a corporate governance framework and related processes that are substantially similar in all material respects to those of the Nasdaq Exchanges.

The Exchange intends to implement the Proposed Rule Change no later than by the end of Q4 2017. The Exchange will alert its members in the form of a Regulatory Alert to provide notification of the implementation date.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange was recently acquired by Nasdaq, Inc. (''HoldCo'').[3] Following the acquisition, the Exchange has continued to operate as a separate self-regulatory organization (''SRO'') and continues to have separate rules, membership rosters, and listings, distinct from the rules, membership rosters, and listings of the Nasdaq Exchanges as well as from ISE and GEMX. The Exchange now proposes to harmonize the corporate governance framework of the Exchange with that of the Nasdaq Exchanges, and submits this Proposed Rule Change to seek the Commission's approval of various changes to the Exchange's organizational documents and Rules that are necessary in connection with the Merger, as described below.

The proposed changes consist of: (1) Deleting the Exchange's current Limited Liability Company Agreement (the ''Current LLC Agreement'') in its entirety and replacing it with a new limited liability company agreement (the ''LLC Agreement'') that is based on the limited liability company agreement of NSM, (2) deleting the Exchange's current Constitution (''Current Constitution'' and together with the Current LLC Agreement, the ''Current Governing Documents'') in its entirety and replacing it with a new set of by-laws (the ''Bylaws'' and together with the LLC Agreement, the ''New Governing Documents'') that is based on the by-laws of NSM, and (3) making minor clarifying changes to its rules, as discussed below.[4]

All of the proposed changes are designed to align the Exchange's corporate governance framework to the existing structure at the Nasdaq Exchanges, particularly as it relates to

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 30, 2016, HoldCo acquired all of the capital stock of U.S. Exchange Holdings, Inc., the Exchange's indirect parent company (the ''Acquisition''). As a result, the Exchange, in addition to its affiliates Nasdaq ISE, LLC (''ISE'') and Nasdaq GEMX, LLC (''GEMX''), became a wholly-owned subsidiary of HoldCo, and also became an affiliate of NSM, Phlx, and BX through common, ultimate ownership by HoldCo. HoldCo is the ultimate parent of the Exchange. *See* Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR–ISEMercury-2016–10).

[4] The Exchange's affiliates, ISE and GEMX, have submitted nearly identical proposed rule changes. *See* Securities Exchange Release No. 81263 (July 31, 2017), 82 FR 36497 (August 4, 2017) (SR–ISE–2017–32) (ISE Approval Order) and Securities Exchange Release No. 81422 (August 17, 2017), 82 FR 40026 (August 23, 2017) (SR–GEMX–2017–37) (GEMX Notice of Filing).

board and committee structure, nomination and election processes, and related governance practices.[5] The Exchange is not proposing any amendments to its ownership structure and International Securities Exchange Holdings, Inc. (''ISE Holdings'') will remain as the Exchange's sole limited liability company member (''Sole LLC Member'') and owner of 100% of the Exchange's limited liability company interests. Furthermore, the Exchange is not proposing any amendments to its trading rules at this time relating to the Merger other than the minor clarifying changes and technical amendments as noted below.

A. The Merger

In order to effectuate the proposed changes above, the Exchange proposes to merge with a Delaware limited liability company (''NewCo''), newly-formed as a wholly-owned subsidiary of ISE Holdings, resulting in the Exchange as the surviving entity. Specifically, pursuant to the Delaware Limited Liability Company Act, as amended from time to time (the ''LLC Act''), NewCo would be formed under ISE Holdings upon filing a certificate of formation with the Secretary of State of the State of Delaware (''DE Secretary of State''). Subsequently, the Exchange would enter into an agreement and plan of merger with NewCo (the ''Merger Agreement''), under which NewCo would merge into the Exchange, with the Exchange surviving the Merger. The Merger Agreement contemplates that the merged limited liability company (*i.e.* the Exchange) would have a new LLC Agreement and new Bylaws, which would be attached to the Merger Agreement. Then, a certificate of merger would be filed with the DE Secretary of State, which will effectuate the Merger at the time of filing. The new LLC Agreement and the new Bylaws would also become effective at the time of filing the certificate of merger. Under the LLC Act, the Merger is subject to approval by the Exchange Board and by ISE Holdings as the Sole LLC Member. The Exchange represents that it has obtained or will obtain the necessary approvals prior to filing the certificate of merger with the DE Secretary of State.

Following the Merger, the Exchange proposes to be governed by the New Governing Documents in accordance with the LLC Act. The specific changes effected by the New Governing Documents to the current documents are discussed in the following sections.

B. Limited Liability Company Agreement

Following the Merger, the Exchange proposes to adopt the LLC Agreement,[6] which would replace the Current LLC Agreement.[7] The proposed LLC Agreement reflects the expectation that the Exchange will be operated with a governance structure substantially similar to that of the Nasdaq Exchanges, and substantially mirrors the provisions found in the NSM LLC Agreement other than as specifically noted herein.[8] Schedule B of the LLC Agreement describes the proposed ownership of the Exchange's limited liability company interests, which ownership structure is identical to that currently in place. ISE Holdings would remain as the Sole LLC Member (and a member of the Exchange within the meaning of the LLC Act) and the sole owner of 100% of the limited liability company interests of the Exchange. Except as specified below, the proposed changes do not affect the manner of the Exchange's operations or governance structure.

Section 1 of the LLC Agreement, titled ''Name,'' specifies the name of the surviving entity of the Merger as the name of the Exchange. Section 2 of the LLC Agreement, titled ''Principal Business Office,'' provides for the principal business office of the Exchange and such other location as may hereafter be determined by the Board.[9]

Sections 3 and 4 of the LLC Agreement, titled ''Registered Office'' and ''Registered Agent,'' specifies the place of the Exchange's registered office and the entity acting as its registered agent, which is the same place and entity used by the Nasdaq Exchanges.[10] The Exchange proposes to replace its current registered office and agent set forth in Section 1.5 of the Current LLC Agreement with the registered office and agent used by the Nasdaq Exchanges for administrative efficiency. This change will not have any material substantive effect on the current operations or the governance of the Exchange.

Section 5 of the LLC Agreement, titled ''Sole LLC Member,'' provides that the mailing address of the Sole LLC Member is set forth on Schedule B of the LLC Agreement. As noted above, ISE Holdings will remain as the Sole LLC Member of the Exchange.

Section 6 of the LLC Agreement, titled ''Certificates,'' refers to the filing of the Certificate of Merger with respect to the Merger. Such provision acknowledges and confirms that such filings, which were necessary for the merger to be effected, were authorized by the Exchange. This Section additionally sets forth those person(s) who have the authority to file any other certificates with the Delaware Secretary of State on behalf of the Exchange pursuant to the LLC Act. This provision is purely administrative in nature and therefore will have no material substantive effect on the current operations or the governance of the Exchange.

Section 7 of the LLC Agreement, titled ''Purposes,'' discusses the Exchange's business purpose, which provides that the Exchange may engage in any lawful act or activity for which limited liability companies may be formed under the LLC Act and any and all activities necessary or incidental to the foregoing. Without limiting these general powers, proposed Section 7 also specifically provides that the Exchange's business would include actions that support its regulatory responsibilities under the Act, including: (i) Supporting the operation, regulation, and surveillance of the national securities exchange operated by the Exchange, (ii) preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination with

[5] The new LLC Agreement and Bylaws are based in form and substance on The NASDAQ Stock Market LLC's Second Amended Limited Liability Company Agreement (the ''NSM LLC Agreement'') and By-Laws (the ''NSM Bylaws''). Additionally, the majority of provisions in the organizational documents of Phlx and BX were also based on those of NSM with differences that relate mainly to disciplinary processes (for Phlx) or to corporate structure (for BX). Notwithstanding, the vast majority of the new governance framework and processes proposed herein are materially identical to those of all three Nasdaq Exchanges.

[6] The proposed LLC Agreement was filed as part of the Proposed Rule Change as Exhibit 5B.

[7] The Current LLC Agreement was filed as part of the Proposed Rule Change as Exhibit 5A.

[8] *See* the Second Amended Limited Liability Company Agreement of The NASDAQ Stock Market LLC (the ''NSM LLC Agreement''). The Second Amended Limited Liability Company Agreement of NASDAQ PHLX LLC (the ''Phlx LLC Agreement'') is also based on and is substantially similar to the NSM LLC Agreement. BX is a Delaware corporation and is governed by a Certificate of Incorporation, not an LLC Agreement. However, the board structure is identical across the Nasdaq Exchanges and therefore, BX's Second Restated Certificate of Incorporation (the ''BX COI'') contains substantially similar governance provisions as the NSM LLC Agreement and Phlx LLC Agreement.

[9] In June 2017, the Exchange relocated its office from 60 Broad Street in New York to One Liberty Plaza in New York. Accordingly, Section 2 of the proposed LLC Agreement now reflects the new One Liberty Plaza address as the principal business office of the Exchange instead of the old 60 Broad address. Similarly, Schedule B of the proposed LLC Agreement, which includes the mailing address of the Exchange's Sole LLC Member, also reflects the new One Liberty Plaza address instead of 60 Broad as the Sole LLC Member's mailing address.

[10] *See* NSM LLC Agreement, Sections 3 and 4; Phlx LLC Agreement, Section 3; and BX COI, Article Second.

persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open market and a national market system, and, in general, protecting investors and the public interest, (iii) supporting the various elements of the national market system pursuant to Section 11A of the Act and the rules thereunder, (iv) fulfilling the Exchange's self-regulatory responsibilities as set forth in the Act, and (v) supporting such other initiatives as the Board may deem appropriate. Section 7 mirrors the Section 7 of the NSM LLC Agreement, and is similar to the language in Section 1.3 of the Current LLC Agreement of the Exchange.

Section 8 of the LLC Agreement, titled ''Powers,'' discusses the general powers of the Exchange, the Board and the officers of the Exchange. Specifically, the Exchange, the Board and the officers on behalf of the Exchange (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 of the LLC Agreement and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the LLC Act. Section 8 is based on Section 8 of the NSM LLC Agreement, and is similar to the provisions in the Current LLC Agreement and the Current Bylaws.[11]

Section 9 of the LLC Agreement, titled ''Management,'' sets forth the proposed management structure of the Exchange. Section 9(a) pertains to the Board of the Exchange and provides that the Board will manage the Exchange's business and affairs, similar to the provisions in Section 5.1 of the Current LLC Agreement.[12] By adopting new Section 9(a), the Exchange proposes to mirror the board structure of the Nasdaq Exchanges.[13] The Exchange proposes to add language to indicate that the Sole LLC Member may determine at any time in its sole and absolute discretion the number of Directors [14] to constitute the Board.[15] The authorized number of Directors may be increased or decreased by the Sole LLC Member at any time in its sole and absolute discretion, upon notice to all Directors, but no decrease in the number of Directors shall shorten the term of any incumbent Member Representative Director. This language mirrors Section 9(a) of the NSM LLC Agreement. In addition, the exact composition of the Board is subject to the requirements in the Bylaws relating to independence and fair representation of members, which are described in detail below.

Fair Representation of Members

The Exchange proposes in Section 9(a), similar to the Nasdaq Exchanges, that at least 20% of the Directors would be Member Representative Directors.[16] Member Representative Directors are elected or appointed after having been nominated by a Member Nominating Committee [17] composed of representatives of the Exchange members or by Exchange members in the manner described in the proposed Bylaws.[18] Currently, there are six directors on the Board who are officers, directors or partners of Exchange members, and are elected by a plurality of the holders of Exchange Rights [19] (the ''Exchange Directors''),[20] of which at least: (i) One must be elected by a plurality of the holders of Primary Market Maker (''PMM'') Exchange Rights, (ii) one must be elected by a plurality of holders of Competitive Market Maker (''CMM'') Exchange Rights, and (iii) one must be elected by a plurality of holders of Electronic Access Member (''EAM'') Exchange Rights; provided, however, that the number of each type of Exchange Director will always be equal to one another.[21] The Exchange adopted the current board structure as it relates to Exchange Directors to comply with Section 6(b) of the Act, which provides that the Exchange must, among other things, assure fair representation of its members (here, the PMMs, CMMs, and EAMs) in the selection of its directors and administration of its affairs (the ''fair representation requirement'').[22] Therefore, the Exchange believes that the Exchange Directors serve the same function on the current Board as ''Member Representative Directors'' on the boards of the Nasdaq Exchanges in that the Exchange Directors give members a voice in the Exchange's use of self-regulatory authority.[23] The Exchange further believes that the new Board structure will still provide for the fair representation of its members because the new structure is well-established as meeting the fair representation requirement.[24]

By adopting the new Board structure set forth in the New Governing Documents, the Exchange is proposing to replace the Exchange Director positions and all related concepts thereto,[25] with Member Representative Director positions and all related concepts that will be further discussed below. In particular, there are a number

[11] *See* Current LLC Agreement, Sections 5.1 and 5.7 and Current Constitution, Sections 3.1 and 4.1

[12] *See also* Current Constitution, Section 3.1.

[13] *See* NSM LLC Agreement, Section 9; Phlx LLC Agreement, Section 8; and BX COI, Article Fifth.

[14] ''Director'' will be defined as the persons elected or appointed to the board of directors from time to time in accordance with the LLC Agreement and the Bylaws, in their capacity as managers of the Exchange. *See* proposed Bylaw Article I(j), which is based on NSM Bylaw Article I(i).

[15] *See* proposed LLC Agreement, Section 9(a). In contrast, the Current Governing Documents have specific limits on the size of the Board in that the Exchange is required to have no less than eight and no more than sixteen directors. *See* Current LLC Agreement, Section 5.2 and Current Constitution, Section 3.2(a).

[16] *See* NSM LLC Agreement, Section 9; Phlx LLC Agreement, Section 8; BX Bylaws, Section 4.3. ''Member Representative Director'' will be defined as a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member. *See* proposed Bylaw Article I(r), which is based on NSM Bylaw Article I(q).

[17] *See* proposed Section 6(b) of Bylaw Article III. ''Member Nominating Committee'' will be defined as the Member Nominating Committee appointed pursuant to the Bylaws. *See* proposed Bylaw Article I(q), which is based on NSM Bylaw Article I(p).

[18] The Commission has previously found that the requirement in the NSM LLC Agreement that 20% of the directors shall be ''Member Representative Directors'' and the means by which they are elected by the members provides for the fair representation of members in the selection of directors and administration of NSM consistent with the requirement in Section 6(b) of the Act. *See* Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (January 23, 2006) (Order Granting Registration as a National Securities Exchange).

[19] *See* Rule 300 Series. ''Exchange Rights'' means the PMM Rights, CMM Rights and EAM Rights collectively. *See* Rule 100(a)(17). PMM Rights, CMM Rights and EAM Rights have the meaning set forth in Article VI of the Current LLC Agreement. *See* Rules 100(a)(12), 100(a)(15) and 100(a)(36). *See also* Current Constitution, Section 13.1(o). PMMs, CMMs, and EAMs represent the three classes of membership on the Exchange. *See* Current Constitution, Sections 13.1(f), 13.1(j) and 13.1(z).

[20] These directors are defined as ''Industry Directors'' in Section 3.2(b)(i) of the Current Constitution, but will be referred to herein as ''Exchange Directors.''

[21] *See* Current Constitution, Section 3.2(b). Section 3.2(b) further requires that the Board be composed of at least 30% Exchange Directors.

[22] *See* Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3). Upon granting the Exchange's application for registration as a national securities exchange, the Commission found that the board composition requirements related to the Exchange Directors satisfied the principles of fair representation as required by Section 6(b) of the Act. *See* Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (Order Granting Registration as a National Securities Exchange) (hereinafter, ''MRX Approval Order'').

[23] Currently, the six Exchange Directors comprise 37.5% of the sixteen-member Board.

[24] *See* note 18 above.

[25] Related concepts include: ''CMM Right,'' ''Competitive Market Maker,'' ''EAM Right,'' ''Electronic Access Member,'' ''Exchange Member Representative,'' ''Exchange Rights,'' ''Industry Directors'' (defined herein as ''Exchange Directors''), ''PMM Rights,'' ''Primary Market Maker,'' and ''Voting Rights.'' *See* Current Constitution, Section 13 for the definitions.

of provisions related to the Exchange Rights set forth in the Current Governing Documents that will not carry over into the New Governing Documents because they relate to the trading rights and privileges of the Exchange members.[26] It should be noted that on MRX, the Exchange Rights do not convey any ownership rights, and only provide for voting rights for representation on the Board (*i.e.,* through the Exchange Directors) and confers the ability to transact on the Exchange.[27] Because the Exchange Director positions will not be reflected in the New Governing Documents for the reasons discussed above, the Exchange believes that the remaining provisions in the Current Governing Documents that relate to the trading rights of its members are more appropriately located in the Rules than in its organizational documents. Already, all of the provisions governing the trading privileges associated with the Exchange Rights that are located in the Current Governing Documents are also substantially set forth in the Rules,[28] and the Exchange is not proposing any changes to those rules or to any of its trading rules in connection with the Merger except as noted below. As described in more detail below, the Exchange will amend its Rules only (i) to clarify any Rules that refer back to the Current LLC Agreement or the Current Constitution in the rule text or (ii) to relocate in the rulebook any provisions in the Current Governing Documents related to the trading privileges of the Exchange Rights holders that are not expressly set forth in the Rules. As such, the holders of Exchange Rights will continue to have the same trading privileges they currently hold as PMMs, CMMs and EAMs under the Exchange Rules and the proposed Board structure of the Exchange will not change any trading privileges. Virtually all of the proposed changes regarding the removal of Exchange Director positions and related concepts from the Exchange's organizational documents are corporate in nature, and are intended simply to conform the organizational documents with those of the Nasdaq Exchanges in order to harmonize the Exchange's board structure with its affiliates. The proposed changes will primarily affect current board composition requirements, the current nomination and election processes of the directors and the current committee composition requirements. These provisions are outlined in detail in the proposed Bylaws of the Exchange, which will be discussed below.

New Section 9(a) of the LLC Agreement also proposes that all Directors other than the Member Representative Directors shall be elected by the Sole LLC Member in the manner described in the proposed Bylaws. Mirroring Section 9(a) of the NSM LLC Agreement, each Director elected, designated or appointed by the Sole LLC Member shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. As noted above, Member Representative Directors shall be elected in accordance with the Bylaws. Each Director shall execute and deliver an instrument accepting such appointment and agreeing to be bound by all the terms and conditions of the LLC Agreement and the Bylaws. A Director need not be an Exchange member.

The Exchange is also proposing to adopt substantially similar provisions set forth in Section 9 of the NSM LLC Agreement with respect to the Powers of the Board, the By-Laws, the Meeting of the Board of Directors, Quorum; LLC Acts of the Board and Electronic Communications.[29] The section discussing the Powers of the Board is similar to the current provisions in the Current Constitution in that the Board is vested with the power to do any and all acts necessary or for the furtherance of the purposes described in the LLC Agreement, including all powers, statutory or otherwise.[30] The Board also has the power to bind the Exchange and delegate powers.[31] As discussed in the Bylaws section below, the Bylaws proposed to be adopted by the Exchange, the Sole LLC Member and the Board in Section 9(c) of the LLC Agreement will replace the Current Constitution of the Exchange.

The Meeting of the Board of Directors subsection contains standard Delaware limited liability company provisions governing regular and special meetings of the board, and related notice provisions. Similar language is found in Section 3.6 of the Current Constitution, and the Exchange is proposing to streamline these administrative procedures across the Nasdaq Exchanges. The Exchange also proposes to add a provision in this subsection that all meetings of the Board of Directors of the Exchange (and any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) or relating to the structure of the market which the Exchange regulates shall be closed to all persons other than members of the Board of Directors and officers, staff, counsel or other advisors whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. The proposed language also prohibits members of the Sole LLC Member's board of directors who are not also members of the Exchange's board of directors or any officers, staff, counsel or advisors of the Sole LLC Member who are not also officers, staff, counsel or advisors of the Exchange from participating in such meetings.[32]

The subsections, Quorum; LLC Acts of the Board and Electronic Communications, contain standard Delaware limited liability company provisions governing quorum rules for Board actions, Board action by unanimous written consent, and how Board and committee members may participate in Board and committee meetings, as applicable. The Exchange notes that these provisions are similar in all material respects to those in the Current Governing Documents [33] and

[26] *See* Current LLC Agreement, Article VI and Current Constitution, Article XII. The Exchange also notes that it is not carrying over the termination provisions in Section 6.4 of the Current LLC Agreement into the New Governing Documents as these generally relate to the voting rights associated with the Exchange Rights, and therefore will no longer be applicable for the reasons discussed above.

[27] *See* Current LLC Agreement, Sections 6.1 and 6.3 and Rules 300 and 302(c); *see also* MRX Approval Order.

[28] For example, Exchange members holding PMM and CMM Rights may seek appointment to become market makers in one or more options classes traded on the Exchange, which entitles them to enter quotations and orders into the Exchange's trading system. *See* Rules 100(a)(34), 100(a)(42) and Rule 800 series; *see also* Sections 12.1(a) and 12.2(a) of the Current Constitution. Exchange members holding EAM Rights are entitled to enter orders into the Exchange's trading system and clear Exchange transactions. *See* Rules 100(a)(9) and 100(a)(34); *see also* Section 12.3(a) of the Current Constitution. The Exchange Rights may not be leased and are not transferable except in the event of a change in control of an Exchange member or corporate reorganization involving an Exchange member. *See* Rule 302(c); *see also* Current LLC Agreement, Section 6.4 and Current Constitution, Sections 12.1(b), 12.2(b), and 12.3(b). There is no limit on the number of Exchange Rights issued by MRX. *See* Rule 300; *see also* Current LLC Agreement, Section 6.1.

[29] *See* proposed Sections 9(b) through (f) of the Exchange's LLC Agreement.

[30] *See* Current Constitution, Section 3.1.

[31] *See* Current LLC Agreement, Section 2.2 (providing that the Sole LLC Member does not have the power to bind the Exchange, said power being vested solely and exclusively in the Board) and Current Constitution, Sections 3.1, 4.13 and 5.1.

[32] The proposed language on board and committee meeting participation in Section 9(d) is not in the governing documents of the Nasdaq Exchanges, but is retained from Section 3.2(d) of the Current Constitution and is intended to help maintain the independence of the Exchange's self-regulatory functions.

[33] *See* Current Constitution, Sections 3.6 and 3.7.

relate primarily to the administrative processes of the Board. Therefore, the Exchange is proposing to streamline these processes across the Nasdaq Exchanges for the sake of efficiency.

Section 9(g) of the LLC Agreement generally discusses the standing committees and provides that the Board may designate one or more committees. By adopting new Section 9(g), the Exchange is proposing to delete the current committees set forth in Article V of the Current Constitution and adopt the standing committees similar to those of the Nasdaq Exchanges. Article V of the Current Constitution provides for the following committees: An Executive Committee, a Corporate Governance Committee, a Finance and Audit Committee, a Compensation Committee, and such other additional committees as may be established by Board resolution. Article V also provides for a nominating committee, which is a committee of the Exchange and not the Board, and nominates the Exchange Directors for election to the Board (the ''Exchange Director Nominating Committee''). The Exchange proposes to replace these rules with ''Committees Composed Solely of Directors'' and ''Committees Not Composed Solely of Directors'' at newly proposed and named Bylaw Article III. The details of those committees will be discussed below in the Bylaws section.

The Exchange proposes to adopt substantially similar provisions set forth in Section 9(g) of the NSM LLC Agreement with respect to the standing committees.[34] First, as set forth in proposed subsection (g)(i), the Board may designate one or more Directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee. Second, in proposed subsection (g)(ii), the Committee members shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board. Vacancies shall be filled by the Board. Third, in proposed subsection (g)(iii), each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall be required to keep regular minutes of its meetings and report the same to the Board when required. Fourth, in proposed subsection (g)(iv), a majority of the committee shall constitute a quorum and the vote of a majority present shall be an act of the committee. Finally, in proposed subsection (g)(v), to the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange. The Exchange also proposes in subsection (g)(v) to limit such committee from having the powers of the Board with respect to approving any matters pertaining to the self-regulatory function of the Exchange or relating to the structure of the market which the Exchange regulates.[35] Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Further, in the absence or disqualification of a member of a committee composed solely of Directors, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. The foregoing provisions are similar to the language found in Section 5.1 of the Current Constitution.

Similar to Section 3.9 of the Current Constitution, proposed Section 9(h) provides that the compensation of Directors shall be fixed by the Board. This language mirrors the provisions in Section 9(h) of the NSM LLC Agreement. The Removal and Resignation of Directors language in proposed Section 9(i) also mirrors Section 9(i) of the NSM LLC Agreement, and is similar to the resignation and removal language in Section 5.4 of the Current LLC Agreement and Sections 3.4 and 3.5 of the Current Constitution. The Directors as Agents language in proposed Section 9(j) provides that the Directors are agents of the Exchange and mirrors Section 9(j) of the NSM LLC Agreement.

Section 10, titled ''Officers,'' the Exchange proposes to adopt identical language regarding officer appointments found in Section 10 of the NSM LLC Agreement, which provisions are similar in nature to the existing provisions in Article IV of the Current Constitution.

Section 11, titled ''Limited Liability,'' contains standard Delaware limited liability company language on the limitation of liability of the Sole LLC Member and the Directors in the manner permitted under the LLC Act. The proposed language is similar to the limitation of liability language found in the Current LLC Agreement [36] and mirrors Section 11 of the NSM LLC Agreement.

Sections 12 through 14 of the LLC Agreement, which are virtually identical to Sections 12 through 14 of the NSM LLC Agreement, are equity-related provisions that encompass the topics of capital contributions, additional capital contributions, and allocations of profits and losses. These provisions set forth the basic economic arrangement of the Sole LLC Member and remain consistent with the economic arrangement under the Current Governing Documents.[37] Proposed Section 15, which relates to distributions, provides that ISE Holdings, as the Sole LLC Member, is generally entitled to all distributions made by the Exchange. Similar to Section 3.3 of the Current LLC Agreement,[38] however, proposed Section 15 also contains a stipulation that (i) the Exchange shall not be required to make a distribution to the Sole LLC Member on account of its interest in the Exchange if such distribution would violate the LLC Act or any other applicable law or is otherwise required to fulfill the regulatory functions or responsibilities of the Exchange, and (ii) Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Exchange and the Exchange shall not make a distribution to the Sole LLC Member using Regulatory Funds.[39] ''Regulatory Funds'' means fees, fines, or penalties derived from the regulatory operations of the Exchange. ''Regulatory Funds'' shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange, even if a portion of such revenues are used to pay costs associated with the

[34] *See* proposed LLC Agreement, Section 9(g)(i)–(v).

[35] This limitation is based on substantially similar language in Section 5.2(ii) of the Current Constitution, and is intended to assure the fair administration and governance of the Exchange.

[36] *See* Current LLC Agreement, Sections 2.3 and 5.8.

[37] *See* Current LLC Agreement, Sections 3.1 and 3.2.

[38] The Exchange notes that Section 3.3 of the Current LLC Agreement also sets forth two exceptions where the Sole LLC Member is entitled to distributions made by the Exchange: (i) For U.S. federal and state income tax purposes pursuant to Section 3.4 of the Current LLC Agreement and (ii) upon liquidation of the Exchange.

[39] The Nasdaq Exchanges will each separately file proposed rule changes to harmonize the distribution provisions in their respective governing documents with the language the Exchange proposes for Section 15, specifically to add the language imported from Section 3.3 of the Exchange's Current LLC Agreement.

regulatory operations of the Exchange.[40] This provision is designed to preclude the Exchange from using its authority to raise Regulatory Funds for the purpose of benefitting its Sole LLC Member.

Similar to Section 4.1 of the Current LLC Agreement, Section 16 of the LLC Agreement, titled ''Books and Records,'' sets forth certain information relating to general administrative matters with respect to the books and records of the Exchange. Specifically, the Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Exchange's business. The books of the Exchange shall at all times be maintained by the Board. The Exchange's books of account shall be kept using the method of accounting determined by the Sole LLC Member. Further, the Exchange's independent auditor shall be an independent public accounting firm selected by the Board.[41] Finally, the Exchange proposes to retain some of the existing concepts on books and records from Section 4.1(b) of the Current LLC Agreement in the new Section 16.[42] First, the books of account and records with respect to the Exchange's business must be kept within the United States. Second, other than as provided in Section 16 with respect to the Commission, all confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange shall: (i) Not be made available to any persons other than to those officers, directors, employees and agents of the Exchange that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange; and (iii) not be used for any non-regulatory purposes. Nothing in the LLC Agreement shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit and impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission.

Section 17, titled ''Reports,'' is being added to mirror the language of the NSM LLC Agreement, and requires the Board, after the end of each fiscal year, to use reasonable efforts to cause the Exchange's independent accountants, if any, to prepare and transmit to the Sole LLC Member any tax information that the Sole LLC Member may reasonably need to prepare its federal, state and local income tax returns for such fiscal year.[43] Section 18, titled ''Other Business,'' is standard language in the Delaware limited liability company context and merely states that the Sole LLC Member and any Director, officer, employee or agent of the Exchange may engage in other business and that the Exchange has no rights to such other business or the proceeds derived therefrom. The Exchange is proposing to mirror the language found in Section 18 of the NSM LLC Agreement.

Section 19, titled ''Exculpation and Indemnification,'' is based on Section 19 of the NSM LLC Agreement. Similar to the provisions in Article VI of the Current Constitution, the language provides for the exculpation and indemnification of ISE Holdings and any officer, Director, employee or agent of the Exchange or of the affiliate of ISE Holdings. Section 20, titled Assignments, is based on Section 20 of the NSM LLC Agreement, but retains similar transfer restrictions from Section 7.1 of the Current LLC Agreement on any assignments by the Sole LLC Member and prohibits the Sole LLC Member from transferring or assigning its limited liability company interest in the Exchange, unless the Commission approves such transfer or assignment pursuant to a rule filing under Section 19 of the Act.[44] Section 21, titled ''Dissolution,'' sets forth the events which will cause the dissolution of the Exchange, as prescribed by mandatory provisions of the LLC Act or as otherwise agreed among the parties, and is based on Section 21 of the NSM LLC Agreement. The proposed language is similar to the language currently in Section 7.2 of the Current LLC Agreement.

Sections 22 through 28 of the proposed LLC Agreement contain general provisions which are relatively standard in Delaware limited liability company agreements.[45] These provisions include: A benefits of agreement clause, a severability clause, an entire agreement clause, a binding agreement clause, a governing law clause, an amendment provision and a notice provision. The Exchange notes that its members are acknowledged in proposed Section 22 as holding rights under the LLC Agreement and included as third-party beneficiaries to the LLC Agreement as is similarly provided in Section 22 of the NSM LLC Agreement.

Section 27, titled ''Amendments,'' provides that the LLC Agreement may be amended by a resolution adopted by the Board and a written agreement executed and delivered by the Sole LLC Member, and further provides that all such amendments to the LLC Agreement will not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Exchange Act and the rules promulgated thereunder.[46]

The Exchange proposes to add a new Schedule A to the LLC Agreement, which contains key definitions used in the LLC Agreement. The Exchange also proposes a section on rules of construction further explaining the definitions in proposed Schedule A.

C. Bylaws

The Exchange proposes to adopt the Bylaws,[47] which would replace the

[40] *See* proposed LLC Agreement, Schedule A.

[41] *See* Section 16 of the NSM LLC Agreement for substantially similar provisions.

[42] These concepts are generally not in the governing documents of the Nasdaq Exchanges, and relate to where the Exchange's books and records must be maintained and who may access such books and records, in particular those that contain confidential information pertaining to the self-regulatory function of the Exchange. While Phlx has a requirement under Section 15 of the Phlx LLC Agreement to keep its books and records in the United States, neither BX nor NSM has this requirement under their respective governing documents. Furthermore, none of the Nasdaq Exchanges have in their governing documents a provision that explicitly sets forth the Commission's right to access their books and records. The Nasdaq Exchanges will each separately file proposed rule changes to harmonize the books and records provisions in their respective governing documents with the language the Exchange proposes for Section 16.

[43] *See* Section 17 of the NSM LLC Agreement for identical provisions.

[44] BX has a similar provision in Section 9.4(c) of the BX Bylaws, which restricts HoldCo, as BX's sole shareholder, from transferring any shares of stock to any entity unless such transfer is filed and approved by the Commission pursuant to a rule filing. In contrast, Section 20 of the NSM LLC Agreement allows HoldCo, as NSM's sole LLC member, to assign NSM's limited liability company interest solely to an affiliate of HoldCo, but does not require approval by the Commission for such assignments. Phlx follows the NSM model. As such, Phlx and NSM will each separately file a proposed rule change to harmonize their assignment provisions with the Exchange's proposal hereunder.

[45] For example, *see* Sections 22 through 28 of the NSM LLC Agreement and Sections 22 through 28 of the Phlx LLC Agreement.

[46] This provision is based in concept on Section 6–9 of the Phlx Bylaws, which requires Phlx to file any amendments to the Phlx Bylaws with the Commission. The Phlx LLC Agreement, however, does not have a similar requirement for amendments to the Phlx LLC Agreement. As well, neither BX nor NSM has filing requirements for amendments in their respective governing documents. Therefore, the Nasdaq Exchanges will each separately file proposed rule changes with the Commission to add this requirement in (as applicable): The Phlx LLC Agreement, the BX COI, the BX Bylaws, the NSM LLC Agreement and the NSM Bylaws.

[47] The proposed Bylaws were filed as part of the Proposed Rule Change as Exhibit 5D.

Exchange's Current Constitution.[48] The Bylaws reflect the expectation that the Exchange will be operated with governance structures similar to those of the Nasdaq Exchanges. Accordingly, the Exchange proposes to adopt Bylaws that set forth the same corporate governance framework and related processes as those contained in the Bylaws of the Nasdaq Exchanges. Article I of the Bylaws, titled ''Definitions,'' contains key definitions used in the Bylaws, and are based on the defined terms used in NSM Bylaw Article I.

Nomination and Election Process

Article II of the Bylaws, titled ''Annual Election of Member Representative Directors and Other Actions by Exchange Members,'' mirrors the language in NSM Bylaw Article II,[49] and contains key provisions regarding the processes for the nomination and election of Member Representative Directors. As discussed in the LLC Agreement section above, the Exchange is proposing to replace the Exchange Directors with Member Representative Directors to harmonize its board structure with the Nasdaq Exchanges. The proposed nomination and election process for Member Representative Directors described in new Article II would replace the current processes for the Exchange Directors set forth in the Current Governing Documents.

Current Nomination and Election Process

Under the current nomination and election process, nominees for election of the Exchange Directors are selected each year by the Exchange Director Nominating Committee (which is not a Board committee but composed of three Exchange member representatives).[50] A petition process will also allow holders of the Exchange Rights to nominate alternate candidates for consideration as Exchange Directors.[51] At an annual meeting of the holders of Exchange Rights, the Exchange Directors are elected by a plurality of the votes cast at the meeting by the holders of Exchange Rights entitled to vote thereon.[52] Following the full nomination, petition, and voting process, each Exchange Director holds office for a term of two years.[53]

Specifically pursuant to Section 3.2(c) of the Current Constitution, the Exchange Directors are divided into two classes, designated as Class I and Class II directors. Each of Class I and Class II is comprised of half of the Exchange Directors. The Exchange Directors of each class holds office until their successors are duly elected and qualified. At each annual meeting of the holders of Exchange Rights, the successors of the class of Exchange Directors whose term expires at that meeting will be elected by the Exchange Rights holders to hold office for a term expiring at the annual meeting held in the second year following the year of their election, and until their successors are elected and qualified.[54] No Exchange Director may serve more than three consecutive terms, and after a two-year hiatus, may be eligible to serve as an Exchange Director again.[55]

Proposed Nomination and Election Process

The Exchange is proposing to adopt identical nomination and election processes as the Nasdaq Exchanges as set forth in proposed Bylaw Article II, Section 1 so that Member Representative Directors would be elected to the Board on an annual basis.[56] For each annual election, the Board would select a Record Date[57] and an Election Date.[58] The Record Date would be at least 10 days but not more than 60 days prior to the Election Date. The Member Nominating Committee, consisting of representatives of the Exchange members, would create a list of one or more candidates for each Member Representative Director position (the ''List of Candidates'') on the Board to be elected on the Election Date. Promptly after selection of the Election Date, in a notice transmitted to the Exchange members and in a prominent location on a publicly accessible Web site, the Exchange (i) shall announce the Election Date and the List of Candidates, and (ii) shall describe the procedures for Exchange members to nominate candidates for election at the next annual meeting. In the event of a Contested Election, the Exchange shall also send its members the List of Candidates and a formal notice of the Election Date, which notice shall be sent by the Exchange at least 10 days but no more than 60 days prior to the Election Date to the Exchange members that were Exchange members on the Record Date, by any means, including electronic transmission, as determined by the Board or committee thereof.

An additional candidate may be added to the List of Candidates by any Exchange member that submits a timely and duly executed written nomination to the Secretary of the Exchange. To be

[48] The Current Constitution was filed as part of the Proposed Rule Change as Exhibit 5C.

[49] Phlx and BX also have the identical nomination and election processes for their Member Representative Directors. *See* Phlx Bylaw Article II and Section 4.4 of the BX Bylaws.

[50] *See* Current Constitution, Section 3.10(a). With respect to the Exchange Director Nominating Committee process, the Secretary of the Exchange, on behalf of the Exchange Director Nominating Committee, will circulate a memorandum to all holders of Exchange Rights soliciting interest in presenting Exchange Director candidates to the Exchange Director Nominating Committee. Shortly after the receipt of candidate submissions, the Exchange Director Nominating Committee will conduct a short interview with each candidate. Following all interviews, the Exchange Director Nominating Committee, by majority vote, will select its Exchange Director candidates and the Secretary of the Exchange will inform the holders of Exchange Rights of the Exchange Director Nominating Committee's selections.

[51] *See* Current Constitution, Section 3.10(a). Specifically, in addition to the Exchange Director nominees named by the Nominating Committee, persons eligible to serve as such may be nominated for election to the Board by a petition, signed by the holders of not less than 5% of the outstanding Exchange Rights of the series entitled to elect such person if there are more than eighty (80) Exchange Rights in the series entitled to vote, ten percent (10%) of the outstanding rights of such series entitled to elect such person if there are between eighty (80) and forty (40) Exchange Rights in the series entitled to vote, and twenty-five percent (25%) of the outstanding Exchange Rights of such series entitled to elect such person if there are less than forty (40) Exchange Rights in the series entitled to vote. For purposes of determining whether a person has been nominated for election by petition by the requisite percentage, no Exchange member, alone or together with its affiliates, may account for more than fifty percent (50%) of the signatures of the holders of outstanding Exchange Rights of the series entitled to elect such person, and any such signatures by such Exchange members, alone or together with its affiliates, in excess of such fifty percent (50%) limitation shall be disregarded. *Id.*

[52] *See* Current Constitution, Sections 2.1 and 2.5. A holder of Exchange Rights, together with any affiliate, may not exercise the voting rights (*i.e.,* voting to elect the Exchange Directors) associated with more than twenty percent (20%) of the outstanding Exchange Rights. *See* Current LLC Agreement, Section 6.3(b).

[53] *See* Current Constitution, Section 3.2(c).

[54] *Id.*

[55] *See* Current Constitution, Sections 3.2(e). The Exchange does not impose term limits on Non-Industry Directors.

[56] *See* Section 1 of NSM Bylaw Article II, Section 2–1 of the Phlx Bylaws and Section 4.4 of the BX Bylaws. Currently, the Exchange Directors are elected for two-year terms.

[57] ''Record Date'' will be defined as a date selected by the Board for the purpose of determining the Exchange members entitled to vote for the election of Member Representative Directors on an Election Date in the event of a Contested Election. *See* proposed Bylaw Article I(bb), which is based on NSM Bylaw Article I(aa).

''Contested Election'' will be defined as an election for one or more Member Representative Directors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected. *See* proposed Bylaw Article I(g), which is based on NSM Bylaw Article I(ee).

[58] ''Election Date'' will be defined as a date selected by the Board on an annual basis, on which the Exchange members may vote with respect to Member Representative Directors in the event of a contested election. *See* proposed Bylaw Article I(k), which is based on NSM Bylaw Article I(j).

timely, an Exchange member's notice would have to be delivered to the Secretary at the principal executive offices of the Exchange not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's Election Date, provided however that in the event that the Election Date is more than 30 days before or more than 70 days after such anniversary date, notice by the Exchange member must be so delivered not earlier than the close of business on the 120th day prior to such Election Date and not later than the close of business on the later of the 90th day prior to such Voting Election or the tenth day following the day on which public announcement of such Election Date is first made by the Exchange. Such Exchange member's notice shall set forth: (i) As to the person whom the Exchange member proposes to nominate for election as a Member Representative Director, all information relating to that person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Act and the rules thereunder (and such person's written consent to be named in the List of Candidates as a nominee and to serving as a Director if elected); (ii) a petition in support of the nomination duly executed by the Executive Representatives [59] of 10% or more of all Exchange members; and (iii) the name and address of the Exchange members making the nomination. The Exchange may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Member Representative Director.

For purposes of determining whether a person has been nominated for election by petition by the requisite percentage, no Exchange member, alone or together with its affiliates, may account for more than 50% of the signatures endorsing a particular candidate, and any such signatures by such Exchange member, alone or together with its affiliates, in excess of such 50% limitation shall be disregarded.[60]

If by the date on which an Exchange member may no longer submit a timely nomination, there is only one candidate for each Member Representative Director position to be elected on the Election Date, the Member Representative Directors will be elected by ISE Holdings as the Sole LLC Member from the List of Candidates. In the event of a Contested Election, the Exchange would conduct a vote to determine the candidates on the List of Candidates in accordance with proposed Section 2 of Bylaw Article II, which mirrors the language found in Section 2 of the NSM Bylaw Article II.

If there is a Contested Election, each Exchange member would have the right to cast one vote for each Member Representative Director position to be filled; provided, however, that any such vote must be cast for a person on the List of Candidates. However, an Exchange member, either alone or together with its affiliates, may not cast votes representing more than 20% of the votes cast for a candidate, and any votes cast by the Exchange member, either alone or together with its affiliates, in excess of such 20% limitation would be disregarded.[61] The votes would be cast by written ballot, electronic transmission or any other means as set forth in a notice to the Exchange members sent by the Exchange prior to the Election Date. Only votes received prior to 11:59 p.m. Eastern Time on the Election Date would count for the election of a Member Representative Director. The persons on the List of Candidates who receive the most votes would be elected to the Member Representative Director positions.

New Section 3 of Bylaw Article II proposes that if a Member Representative Director position becomes vacant prior to the expiration of such person's term, or it an increase in the size of the Board results in the creation of a new Member Representative Director position, the Sole LLC Member will elect a person from a list of candidates prepared by the Member Nominating Committee to fill such vacancy, except that if the remaining term of office for the vacant Director position is less than six months, no replacement will be required. The proposal would replace the current process for filling Exchange Director vacancies on the Board,[62] and mirrors Section 3 of NSM Bylaw Article II. Finally, new Section 4 of Bylaw Article II, copied from Section 4 of NSM Bylaw Article II, proposes that the Exchange will not be required to hold meetings of the Exchange members.[63]

Related to the proposed changes to the Exchange's nomination and election process described above, the Exchange also proposes to create a Member Nominating Committee, which would replace the current Exchange Director Nominating Committee in nominating candidates for director positions that meet the fair representation requirement (*i.e.,* the proposed Member Representative Directors). In addition, the new Member Nominating Committee would nominate candidates for committee positions that meet the fair representation requirement (*i.e.,* the ''Member Representative members'').[64] Similar to the Member Representative Directors on the Board, the function of Member Representative members is to provide members a voice in the administration of the Exchange's affairs, specifically on certain committees that are responsible for providing advice on any matters pertaining to the Exchange's self-regulatory function or relating to the market structure which the Exchange regulates. The Exchange will therefore require that at least 20% of the persons

[59] ''Executive Representative'' will be defined as an individual appointed by an Exchange member to represent, vote, and act for the Exchange member in all the affairs of the Exchange; provided, however, that other representatives of an Exchange member may also serve on the Board or committees of the Exchange or otherwise take part in the affairs of the Exchange. If an Exchange member is also a member of FINRA, the Exchange executive representative shall be the same person appointed to serve as the FINRA executive representative. An Exchange member may change its executive representative or appoint a substitute for its executive representative upon giving notice thereof to the Exchange Secretary via electronic process or such other process as the Exchange may prescribe. An executive representative of an Exchange member or a substitute shall be a member of senior management and registered principal of the Exchange member. Each executive representative shall maintain an Internet electronic mail account for communication with the Exchange and shall update firm contact information as prescribed by the Exchange. Each member shall review and, if necessary, update its executive representative designation and contact information in the manner prescribed by the Exchange. *See* proposed Bylaw Article I(l), which is based on NSM Bylaw Article I(k) and NSM Rule 1150.

[60] This 50% limitation is not in the governing documents of the Nasdaq Exchanges but is based on the existing 50% limitation found in Section 3.10(a)(ii) of the Current Constitution. The existing 50% limitation caps the signature count by member class (*i.e.,* 50% of the signatures of the holders of Exchange Rights of the series entitled to elect such person). Because the fair representation directors will no longer be elected separately by each member class but by the Exchange members as a whole, it is also no longer necessary to apply a separate 50% limitation on each class of members.

[61] This is the same as the 20% voting limitation included in Section 6.3(b) of the Exchange's Current LLC Agreement. *See* note 52 above.

[62] *See* Current Constitution, Section 3.3.

[63] In contrast, the Current Constitution requires that an annual meeting of the holders of Exchange Rights be held for the purpose of electing Exchange Directors to fill expiring terms. *See* Current Constitution, Section 2.1. As noted above for the proposed process, the Exchange members may vote in the event of a Contested Election, through a balloting process without a formal meeting.

[64] ''Member Representative member'' will be defined as a member of any committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to the Bylaws. *See* proposed Bylaw Article I(s), which is based on NSM Bylaw Article I(r).

serving on any such committees be individuals who will have been appointed by the Member Nominating Committee and be representative of the Exchange's membership in order to ensure that its members have the opportunity to formally provide input on matters that are important to them.[65] New Section 6(b) of Bylaw Article III, which is copied from Section 6(b) of NSM Bylaw Article III, proposes that the Member Nominating Committee would nominate candidates for each Member Representative Director position on the Board, and would also nominate candidates for appointment by the Board for positions on any committees with positions reserved for Member Representative members. The Member Nominating Committee would consist of no fewer than three and no more than six members. All members of the Member Nominating Committee would be a current associated person of a current Exchange member. The Board would appoint such individuals after appropriate consultation with the Exchange members. Member Nominating Committee members would be appointed annually by the Board and may be removed by a majority vote of the Board.

The Exchange believes that the proposed process for selecting Member Representative Directors, together with the requirement in the proposed LLC Agreement that the Board be comprised of at least 20% Member Representative Directors as discussed in the LLC Agreement section above, will continue to provide for a fair representation of its members on the Board. Similar to the nomination and election process currently in place, proposed Bylaw Article II includes a process by which members can directly petition and vote for representation on the Board. The Exchange also believes that proposed process for selecting Member Representative members, together with requirements in the proposed Bylaws that certain committees such as the Quality of Markets Committee be composed of at least 20% Member Representative members, will continue to provide for fair representation of its members in the administration of the Exchange's affairs. In addition, the proposed Member Nominating Committee would be composed solely of persons associated with Exchange members, similar to the current Exchange Director Nominating Committee, and is selected after consultation with representatives of Exchange members. The Commission has previously approved rule changes for substantially similar board nomination and election processes for the Nasdaq Exchanges.[66]

Board Composition

The Exchange is proposing to adopt Article III of the Bylaws, titled ''Board of Directors,'' which is based on NSM Bylaw Article III. Section 1 of Bylaw Article III proposes that if any Director position other than a Member Representative Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee (discussed below) shall nominate, and the Sole LLC Member shall select, a person satisfying the classification (Industry, Non-Industry, or Public Director), if applicable, for the directorship to fill such vacancy.

Section 2(a) of Bylaw Article III sets forth the proposed Board composition requirements and provides that a Director may not be subject to a statutory disqualification. The Exchange is proposing to replace the current Board qualification requirements with the ones set forth in the new Section 2(a), which mirrors the qualifications language in Section 2(a) of NSM Bylaw Article III. This proposed change to the current Board composition is in addition to the proposal discussed in the LLC Agreement section above to give the Sole LLC Member discretion to determine the size of the Board from time to time.[67]

Currently, the number of directors on the Board must be no less than eight and no more than sixteen[68] and in no event shall the number of Exchange Directors constitute less than 30% of the members of Board and in no event shall the number of directors who meet the qualifications of ''non-industry representatives'' as set forth in the Current Constitution[69] constitute less than the number of Exchange Directors.[70] Furthermore, the Board must be composed as follows: (i) At least 50% directors who meet the qualifications of ''non-industry representatives'' [71] and elected by ISE Holdings as the Sole LLC Member, at least one (1) of whom must meet the qualifications of ''Public Director,'' [72] (ii) one (1) director, who is the President and Chief Executive Officer of the Exchange (the ''CEO Director''),[73] and (iii) at least 30% Exchange Directors, as described above.[74]

The Exchange is proposing to replace the aforementioned Board composition with the board structure in place at the Nasdaq Exchanges. As is the case with the Nasdaq Exchanges, the proposed Board composition would be required to reflect a balance among ''Industry Directors,'' ''Member Representative Directors,'' and ''Non-Industry Directors,'' including ''Public Directors.'' [75] The new Board structure would be as follows:

[65] Under the Proposed Rule Change, the new Quality of Markets Committee, whose primary function is to provide advice on industry-wide market issues, will be required to be composed of at least 20% Member representative members. The Quality of Markets Committee is discussed in detail below.

[66] *See e.g.* Securities Exchange Act Release No. 53128 (Jan. 13, 2006), *see* note 18 above; Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02, –23, –25, SR–BSECC–2001–01) (Order Approving a Proposal by BX to Amend and Restate its COI and its Constitution to Reflect its Acquisition by the NASDAQ OMX Group); and Securities Exchange Act Release No. 59794 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR-Phlx-2009–17) (Order Approving Proposed Rule Change Relating to the Nomination and Election of Candidates for Governor and Independent Governor).

[67] *See* proposed Section 9(a) of the LLC Agreement.

[68] *See* Current Constitution, Section 3.2(a). Currently, the Board is comprised of sixteen directors.

[69] The term ''non-industry representative'' means any person who would not be considered an ''industry representative,'' as well as (i) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of non-member affiliates, or (ii) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity. *See* Current Constitution, Section 13.1(v).

The term ''industry representative'' means a person who is an officer, director or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three (3) years, as well as a person who has a consulting or employment relationship with or has provided professional services to the Exchange and a person who had any such relationship or provided any such services to the Exchange at any time within the prior three (3) years. *See* Current Constitution, Section 13.1(s).

[70] *See* Current Constitution, Section 3.2(a). Section 3.2(a), similar to proposed Section 2(a) of Bylaw Article III, also provides that a director may not be subject to a statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act).

[71] *See* Current Constitution, Section 3.2(b).

[72] A ''Public Director'' is a non-industry representative who has no material relationship with a broker or dealer or any affiliate of a broker or dealer or the Exchange or any affiliate of the Exchange. *See* Current Constitution, Section 3.2(b) and Sections 13.1(aa) and (bb).

[73] *See* Current Constitution, Section 3.2(b). The President and Chief Executive Officer of the Exchange is elected by the Board and will be nominated by the Board for a directorship by virtue of his or her office. *See* Current Constitution, Section 4.6(a). The President and Chief Executive Officer will only serve on the Board for so long as such person remains the President and Chief Executive Officer. *See* Current Constitution, Section 3.2(e).

[74] *See* Current Constitution, Section 3.2(b).

[75] *See* Section 2(a) of NSM Bylaw Article III, Section 3–2(a) of Phlx Bylaws and Section 4.3 of BX Bylaws.

• At least twenty percent (20%) of the directors on the Board would be ''Member Representative Directors;'' [76]

• The number of ''Non-Industry Directors'' [77] would equal or exceed the sum of the number of ''Industry Directors'' [78] and ''Member Representative Directors'' [79]

• The Board would include at least one ''Public Director'' [80] and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives);

• Up to two officers of the Exchange (''Staff Directors'') may be elected to the Board.[81]

Under Section 2(b) of proposed Bylaw Article III, which mirrors Section 2(b) of NSM Bylaw Article III, a Director would be disqualified and removed immediately upon a determination by the Board, by a majority vote of the remaining Directors, (a) that the Director no longer satisfies the classification for which the Director was elected; and (b) that the Director's continued service as such would violate the compositional requirements of the Board set forth in proposed Section 2(a). Thus, for example, if a Public Director became employed by a broker-dealer and the Board thereby had an inadequate number of Public Directors, the Director would be disqualified and removed. If a Director is disqualified and removed, and the remaining term of office of such Director at the time of termination is not more than 6 months, a replacement for the Director is not required until the next annual meeting. Analogous disqualification provisions exist for committee members.[82]

Upon the Acquisition, there were a number of harmonizing changes to the Board,[83] which resulted in a complete overlap of directors on the boards of the Exchange, NSM, Phlx and BX. Specifically, there were eight (8) directors meeting the qualifications of ''non-industry representatives'' under the Current Constitution and ''Non-Industry Directors'' under each of the Nasdaq Exchanges' Bylaws.[84] Furthermore, two of these directors also met the compositional requirements of ''Public Directors'' under the Current Constitution and under the Bylaws of each Nasdaq Exchange.[85] The Chief Executive Officer appointed upon the Acquisition by the Sole LLC Member became a Board member by virtue of his office under the current Constitution, and also met the qualifications of ''Staff Director'' under each of the Nasdaq Exchange Bylaws. Five of the six Exchange Directors serving on the Board immediately prior to the Acquisition remained on the Board post-Acquisition. One Exchange Director was appointed by the Exchange Director Nominating Committee and elected to the Board upon the Acquisition due to his predecessor being term limited out under the Current Constitution. The Board therefore satisfied the composition requirements in the Current Constitution that at least 50% of directors be ''non-industry representatives,'' and at least 30% be Exchange Directors. The six Exchange Directors also served as ''Member Representative Directors'' on the Nasdaq Exchange boards, therefore satisfying the 20% Member Representative Director requirement under their Bylaws. As such, the post-Acquisition Board satisfied the composition requirements contained both in the Current Constitution and in the proposed Bylaws.

The terms of the directors on the post-Acquisition Board ended at the 2017 annual meeting of the Exchange Members and Sole LLC Member (''2017 Annual Election''), which was held on June 19, 2017 to elect the current Board and coincided with the 2017 annual elections of the Nasdaq Exchange boards. The Exchange held the 2017 Annual Election to elect the current Board in accordance with the nomination, petition and voting processes set forth in the Current Governing Documents. Once the New Governing Documents become operative, no additional actions will be required under the LLC Act with respect to the current Board. All of the directors on the current Board are existing directors who served on the post-Acquisition Board and, similar to the post-Acquisition Board as described above, the current Board satisfies the board composition requirements both in the Current Governing Documents and in the New Governing Documents.[86] Even though the current Board was not nominated or voted upon in accordance with New Governing Documents, the Exchange believes that the current Board is consistent with the Act in that it still provides for the fair representation of members and has one

[76] *See* proposed LLC Agreement, Section 9(a). ''Member Representative Director'' will be defined as a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange member. *See* proposed Bylaws, Article I(r), which is based on NSM Bylaw Article I(q).

[77] ''Non-Industry Director'' will be defined as a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer, director, or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director. *See* proposed Bylaws, Article I(w), which is based on NSM Bylaw Article I(v).

[78] An ''Industry Director'' will be a person with direct ties to the securities industry as a result of connections to a broker-dealer, the Exchange or its affiliates, FINRA, or certain service providers to such entities. Specifically, an ''Industry Director'' will be defined as a Director (excluding Staff Directors), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. *See* proposed Bylaws Article I(m), which is based on NSM Bylaw Article I(l).

[79] *See* proposed Section 2(a) of Bylaw Article III.

[80] *Id.* ''Public Director'' will be defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. *See* proposed Bylaw Article I(z), which is based on NSM Bylaw Article I(y).

[81] *See* proposed Bylaw Article I(m). Staff Directors will not be considered as either Industry or Non-Industry Directors.

[82] *See* proposed Section 4(b) of Bylaw Article III, which mirrors the language in Section 4(b) of NSM Bylaw Article III.

[83] These changes consisted of the resignations of all directors, other than the Exchange Directors, sitting on the Board immediately prior to the consummation of the Acquisition, and the appointments of Nasdaq designees to fill these vacancies on the Board. The changes were effected through a series of unanimous written consents by the Board, as well as unanimous written consents by the Exchange Director Nominating Committee and the Corporate Governance Committee. The Exchange represents that these changes were effected in accordance with the Current Governing Documents.

[84] These eight directors also sat on the three Nasdaq Exchange boards immediately prior to the Acquisition.

[85] In addition, the current Board also satisfies the requirement under the Nasdaq Exchange Bylaws that the board be composed of at least one Public Director and at least one (or two, if the board consists of ten or more directors) issuer representatives.

[86] *See* Current Constitution, Section 3.2; proposed LLC Agreement, Section 9(a); and proposed Bylaw Article III, Section 2(a).

or more directors that are representative of issuers and investors and not associated with a member of the exchange, broker, or dealer. First, six Exchange Directors, who are officers, directors or partners of Exchange members as required by Section 3.2(b) of the Current Constitution, were nominated by the Exchange Director Nominating Committee and elected to the current Board by a plurality of the holders of the Exchange Rights. These Exchange Directors were subject to the full petition and voting process by membership in accordance with Articles II and III of the Current Constitution, which process the Commission has already found as satisfying the principles of fair representation as required by Section 6(b) of the Act.[87] Furthermore as noted above, the Exchange believes that the Exchange Directors serve the same function as the Member Representative Directors under the proposed board structure in that both directorships give Exchange members a voice in the Exchange's use of self-regulatory authority. The Exchange notes that only the corporate governance structure is changing under the Proposed Rule Change, and that the Exchange's membership has remained substantially the same both before and after the 2017 Annual Election.

Second, eight directors who meet the requirements of non-industry representatives under the Current Constitution as well as Non-Industry Directors under the proposed Bylaws were nominated by the existing Corporate Governance Committee and elected by the Sole LLC Member to the current Board. Further, at least three of these directors are Public Directors or issuer representatives, consistent with the composition requirements under the Current Constitution and proposed Bylaws. The current Board therefore reflects a balance among the six Exchange Directors (*i.e.,* Member Representative Directors) and the eight non-industry representative directors (*i.e.,* Non-Industry Directors, including Public Directors or issuer representatives). The Exchange's Chief Executive Officer was also elected to the current Board by the Sole LLC Member, thereby satisfying the composition requirements of CEO Director and Staff Director under the Current Constitution and proposed Bylaws.

For the annual elections starting in 2018 and subject to approval by the Commission, the Exchange will hold its annual elections in accordance with the processes contemplated in the New Governing Documents and as such, the 2017 Board will serve until the 2018 annual election. Specifically upon the Merger, the 2017 Board will appoint a Nominating Committee (as discussed in detail below) and a Member Nominating Committee, and such committees would nominate candidates for the 2018 annual election pursuant to the procedures set forth in proposed Bylaw Article I (for Member Representative Directors) and in proposed Section 9(a) of the LLC Agreement and proposed Bylaw Article III (for all other Directors).

Section 3 of Bylaw Article III, which is copied from Section 3 of NSM Bylaw Article III, contains standard provisions for a Delaware limited liability company governing the appropriateness of reliance by Directors upon the records of the Exchange. Section 3 also recognizes the Exchange's status as an SRO by providing that the Board, when evaluating any proposal, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board deems relevant, including, without limitation, (i) the potential impact thereof on the integrity, continuity and stability of the national securities exchange operated by the Exchange and the other operations of the Exchange, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system. Taken together, these provisions are designed to reinforce the notion that the Exchange is not solely a commercial enterprise but rather an SRO registered pursuant to the Act and subject to the obligations imposed by the Act.

Standing Committees

The proposed new Sections 4, 5 and 6 of Bylaw Article III, which are based on Sections 4, 5 and 6 of the NSM Bylaw Article III, would include provisions governing the composition and authority of various standing committees established by the Board. Proposed new Section 4 of Bylaw Article III would require prospective committee members, who are not Directors, to provide the Secretary of the Exchange with certain information to classify a committee member as an Industry member,[88] a Member Representative member,[89] a Non-Industry member,[90] or a Public member.[91] Analogous new provisions are also proposed for prospective Directors.[92]

Sections 5 and 6 of proposed Bylaw Article III, titled ''Committees Composed Solely of Directors'' and ''Committees Not Composed Solely of Directors,'' establishes several standing committees and delineates their general duties and responsibilities. The proposed committee structure is modeled substantially on the committee

[87] *See* MRX Approval Order.

[88] ''Industry member'' will be defined as a member of any committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. *See* proposed Bylaw Article I(n), which is based on NSM Bylaw Article I(m).

[89] ''Member Representative member'' will be defined as a member of any committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to the Bylaws. *See* proposed Bylaw Article I(s), which is based on NSM Bylaw Article I(r).

[90] ''Non-Industry member'' will be defined as a member of any committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on the national securities exchange operated by the Exchange; or (iii) any other individual who would not be an Industry member. *See* proposed Bylaw Article I(x), which is based on NSM Bylaw Article I(w).

[91] ''Public member'' will be defined as a member of any committee appointed by the Board who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. *See* proposed Bylaw Article I(aa), which is based on NSM Bylaw Article I(z).

[92] *See* proposed Section 6(b)(v) of Bylaw Article III, which is based on Section 6(b)(v) of NSM Bylaw Article III.

structures of the Nasdaq Exchanges, and are copied to the extent such committees are relevant to the Exchange.[93]

Currently, the standing Board committees of the Exchange are: An Executive Committee, a Corporate Governance Committee, a Finance and Audit Committee, a Compensation Committee, and such other additional committees as may be established by Board resolution.[94] As discussed above, the Exchange also has an Exchange Director Nominating Committee, which is a committee of the Exchange and not the Board. All committee appointments are made by the Board, and each appointee serves for one year or until his or her successor is duly appointed.

Proposed Committees Composed Solely of Directors

New Section 5 of Bylaw Article III, which copies the language in Section 5 of NSM Bylaw Article III, provides for an Executive Committee, a Finance Committee, and a Regulatory Oversight Committee.

Creation of an Executive Committee

The Exchange proposes to adopt new Section 5(a), which provides that the Board may appoint an Executive Committee and delineates its composition and functions. In particular, the proposed Executive Committee may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange between meetings of the Board. The number of Non-Industry Directors on the Executive Committee must equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee must be at least as great as the percentage of Public Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee must be at least as great as the percentage of Member Representative Directors on the whole Board. Currently, the Executive Committee is a permanent standing committee of the Board.[95] Under the new Section 5(a), the Executive Committee would be an optional committee, to be appointed only if deemed necessary by the Board. The Exchange's proposal is similar to all three Nasdaq Exchanges where the Exchange Committee is optional, at the discretion of the Board.[96]

Elimination of the Current Finance and Audit Committee

The Exchange also proposes to adopt new Section 5(b), which provides that the Board may appoint a Finance Committee and delineates its composition and functions. In particular, the Finance Committee will advise the Board with respect to the oversight of the financial operations and conditions of the Exchange, including recommendations for the Exchange's annual operating and capital budgets and proposed changes to the rates and fees charged by the Exchange. By adopting new Section 5, the Exchange is proposing to eliminate the current Finance and Audit Committee, and have all of its duties and functions performed at the Board level, assigned to other proposed Board committees or to the HoldCo audit committee (the ''HoldCo Audit Committee'').[97]

Pursuant to its current charter, the Finance and Audit Committee [98] is primarily charged with: (i) Oversight of financial operations of the Exchange; (ii) oversight of the Exchange's financial reporting process; (iii) oversight of the systems of internal controls established by management and the Board, and for monitoring compliance with laws and regulations; (iv) evaluation of independent external auditors; and (v) direction and oversight of the internal audit function. Under the new Section 5(b), the Board would retain oversight of the financial operations of the Exchange instead of delegating these functions to standing committee, and would have to option to appoint a Finance Committee at the Board's discretion. The Exchange's proposal is similar to all three Nasdaq Exchanges where the Finance Committee is optional, at the discretion of the Board.[99]

Furthermore, the HoldCo Audit Committee also covers the functions of the current Finance and Audit Committee. The HoldCo Audit Committee is composed of at least three directors, all of whom must satisfy the standards for independence set forth in Section 10A(m) of the Act [100] and Rule 5605 of NSM's listing rules. All committee members must be able to read and understand financial statements, and at least one member must have past employment experience in finance or accounting, requisite professional certification in accounting or any other comparable experience or background that results in the individual's financial sophistication.

The HoldCo Audit Committee has broad authority to review the financial information that will be provided to shareholders of HoldCo and others, systems of internal controls, and audit, financial reporting and legal and compliance processes. Because HoldCo's financial statements are prepared on a consolidated basis that includes the financial results of HoldCo's subsidiaries, including the Exchange and the other Nasdaq Exchange subsidiaries, HoldCo's audit committee purview necessarily includes these subsidiaries. The Exchange notes that unconsolidated financial statements of the Exchange will still be prepared for each fiscal year in accordance with the requirements set forth in its application for registration as a national securities exchange.[101] To the extent the current Finance and Audit Committee oversees the Exchange's financial reporting process, its activities are duplicative of the activities of the HoldCo Audit Committee, which is also charged with providing oversight over financial reporting and independent auditor selection for HoldCo and all of its subsidiaries, including the Exchange and the other Nasdaq Exchange subsidiaries. Similarly, the HoldCo Audit Committee has general responsibility for oversight over internal controls, and direction and oversight over the internal audit function for

[93] For example, the Exchange does not propose to establish an Exchange Listing and Hearing Review Council because the Exchange does not offer any original listings. Similarly, the Exchange does not propose to establish an Arbitration and Mediation Committee as the Exchange's arbitration and mediation program is operated by the Financial Industry Regulatory Authority (''FINRA'') in accordance with the FINRA rules pursuant to a regulatory services agreement dated June 10, 2013, as amended (''RSA''). Under the RSA, FINRA provides a comprehensive dispute resolution program for Exchange members.

[94] *See* Current Constitution, Article V.

[95] The Executive Committee (consisting of six directors, and with the number of non-industry representatives equaling or exceeding the number of Exchange Directors) on behalf of the Board and subject to its control, has all of the powers of the Board except the power to approve (i) any merger, consolidation, sale or dissolution of the Exchange or (ii) any matters pertaining to the self-regulatory function of the Exchange or relating to the structure of the market which the Exchange regulates. *See* Current Constitution, Section 5.2.

[96] *See* Section 5(a) of NSM Bylaw Article III, Section 4.13(a) of the BX Bylaws and Section 5–2(a) of the Phlx Bylaws.

[97] *See* Article IV, Section 4.13(g) of the HoldCo By-Laws. *See also* the HoldCo Audit Committee Charter (available at *http://ir.nasdaq.com/corporate-governance-document.cfm?DocumentID=195*).

[98] The current Finance and Audit Committee must be composed of at least three (3) and not more than five (5) directors, all of whom must be non-industry representatives. *See* Current Constitution, Section 5.5. In addition, committee members must be ''financially literate'' as determined by the Board.

[99] *See* Section 5(b) of NSM Bylaw Article III, Section 4.13(b) of the BX Bylaws and Section 5–2(b) of the Phlx Bylaws.

[100] *See* U.S.C. 78j–1(m).

[101] *See* MRX Approval Order.

HoldCo and all of its subsidiaries. Thus, the responsibilities of the Exchange's Finance and Audit Committee as it relates to the functions set forth in clauses (ii)–(v) above are fully duplicated by the responsibilities of the HoldCo Audit Committee. Accordingly, the Exchange is proposing to allow the elimination of its Finance and Audit Committee. The Commission has previously approved similar proposals by the Nasdaq Exchanges to eliminate their respective audit committees.[102]

Creation of a Regulatory Oversight Committee

The Exchange believes, however, that even in light of the HoldCo Audit Committee's overall responsibilities for internal controls and the internal audit function, it is nevertheless important for the Board to maintain its own independent oversight over the Exchange's controls and internal audit matters relating to the Exchange's operations. Therefore, the Exchange is proposing to create a Regulatory Oversight Committee (''ROC'') so that regulatory oversight functions formerly performed by the Finance and Audit Committee may be assumed by the new committee.[103] Like the ROCs of the Nasdaq Exchanges, the new committee will have broad authority to oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities, and will therefore be able to maintain oversight over controls in tandem with the HoldCo Audit Committee's overall oversight responsibilities.

Similarly, it is already a formal practice of HoldCo's Internal Audit Department, which performs internal audit functions for all HoldCo subsidiaries, to report to the Nasdaq Exchange boards on all Nasdaq Exchange-related internal audit matters and to direct such reports to the ROCs of the Nasdaq Exchanges.[104] The Exchange proposes that the HoldCo Internal Audit Department would also similarly report to the Exchange Board and direct such reports to the new ROC. In addition, to ensure that the Exchange Board retains authority to direct the Department's activities with respect to the Exchange, the Department's written procedures will to stipulate that the Exchange's ROC may, at any time, direct the Department to conduct an audit of a matter of concern to it and report the results of the audit both to the Exchange ROC and the HoldCo Audit Committee. The Internal Audit Department is currently required to conduct such audits upon the request of the Nasdaq Exchange ROCs.

To effectuate this change, the Exchange proposes to adopt the new Section 5(c) providing for a ROC and delineating its composition and functions. In particular, the proposed ROC's responsibilities will be to: (i) Oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; (ii) assess the Exchange's regulatory performance; and (iii) assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions. In furtherance of its functions, the ROC shall: (A) Review the Exchange's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (B) meet regularly with the Exchange's Chief Regulatory Officer in executive session; and (C) be informed about the compensation and promotion or termination of the Chief Regulatory Officer and the reasons therefor. The Exchange proposes that the ROC shall consist of three members, each of whom shall be a Public Director and an ''independent director'' as defined in Rule 5605 of the Rules of The NASDAQ Stock Market, LLC.

Given the expansive regulatory and internal oversight of the proposed ROC and HoldCo Audit Committee, coupled with the oversight and responsibilities of the full Board and HoldCo's Internal Audit Department, the Exchange believes that all of the duties and functions of the eliminated Finance and Audit Committee would continue to be performed in the new governance structure as proposed herein.

Elimination of the Current Compensation Committee

By adopting the new Board committees in Section 5, the Exchange also proposes to eliminate its current Compensation Committee, and to prescribe that its duties be performed by the HoldCo management compensation committee or the full Board when required. The Compensation Committee[105] is primarily charged with reviewing and approving compensation policies and plans for the Chief Executive Officer and other senior executive officers of the Exchange. Under the Nasdaq governance structure, this function is performed by the HoldCo management compensation committee or the full boards of the Nasdaq Exchanges. The HoldCo By-Laws provide that its management compensation committee (a committee consisting of at least two HoldCo board members meeting the independence and other eligibility standards in the listing rules of NSM) considers and recommends compensation policies, programs, and practices for employees of HoldCo. Because many employees performing work for the Exchange are also employees of HoldCo, its compensation committee already performs these functions for such employees. Moreover, certain of its senior officers are also officers of HoldCo and other HoldCo subsidiaries because their responsibilities relate to multiple entities within the HoldCo corporate structure. Accordingly, HoldCo pays these individuals and establishes compensation policy for them. Most notably, the current Chief Executive Officer of the Exchange is also an ''executive officer'' of HoldCo within the meaning of NSM Rule 5605. Under that rule, the compensation of executive officers of an issuer of securities, such as the common stock of HoldCo, that is listed on NSM, must be determined by, or recommended to the board of directors for determination by, a majority of independent directors or a compensation committee comprised solely of independent directors. Accordingly, the HoldCo board of directors and/or its compensation committee is legally required to establish the compensation for this individual.

To the extent that policies, programs, and practices must also be established for any Exchange officers or employees who are not also HoldCo officers or employees, the Board would perform such actions without the use of a compensation committee (but subject to the recusal of the Staff Directors).[106]

[102] *See* Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR–NASDAQ–2009–042); Securities Exchange Act Release No. 60247 (July 6, 2009), 74 FR 33495 (July 13, 2009) (SR–BX–2009–021); and Securities Exchange Act Release No. 60687 (September 18, 2009), 74 FR 49060 (September 25, 2009) (SR–Phlx–2009–59).

[103] *See* proposed Section 5(c) of Bylaw Article III. The Nasdaq Exchanges also have Regulatory Oversight Committees, which have the same authority in all material respects to the proposed ROC. *See* Section 5(c) of NSM Bylaw Article III, Section 4.13(c) of the BX Bylaws and Section 5–2(c) of the Phlx Bylaws.

[104] *See* the Regulatory Oversight Committee Charter of NSM, Phlx and BX (available at *http://ir.nasdaq.com/corporate-governance-document.cfm?DocumentID=1097*).

[105] The committee must be composed of at least three and not more than five directors who must all meet the ''Non-Industry Director'' qualifications under the Current Constitution. *See* Current Constitution, Section 5.6.

[106] As discussed in the proposed Board composition section above, ''Staff Directors'' would be Exchange directors that are also serving as officers. Since the Board would not be responsible for setting the compensation of any Staff Directors who are also officers of HoldCo, they would be permitted to participate in discussions concerning compensation of Exchange employees, but would

Finally, it should be noted that under the new Section 5(c) of Bylaw Article III, the ROC of the Board would be informed about the compensation and promotion or termination of the Exchange's Chief Regulatory Officer and the reasons therefor, to allow the ROC to provide oversight over decisions affecting this key officer. Therefore, the Exchange believes that the duties and functions of the eliminated Compensation Committee would continue to be performed and covered in the new corporate governance structure proposed by the New Governing Documents. The Commission has previously approved proposals by the Nasdaq Exchanges to eliminate their respective compensation committees.[107]

Elimination of the Current Corporate Governance Committee

Finally, the Exchange also proposes to eliminate the current Corporate Governance Committee, and to prescribe that its duties be performed by the new Nominating Committee (as discussed below), the new ROC or by the full Board when required. The Corporate Governance Committee [108] is primarily charged with: (i) Nominating candidates for all vacant or new non-industry representative positions on the Board, (ii) overseeing the Exchange's regulatory activities and program, and (iii) overseeing and evaluating the governance of the Exchange. As discussed below, the Exchange is proposing to establish a new Nominating Committee that would nominate candidates for all vacant or new non-Member Representative Director positions on the Board, and therefore would perform the Non-Industry Director nominating functions of the current Corporate Governance Committee.[109] Furthermore, the new ROC would have to carry out the regulatory oversight tasks currently within purview of the Corporate Governance Committee. In particular, the new ROC would (i) oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; (ii) assess the Exchange's regulatory performance; and (iii) assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions. Its duties would include reviewing the Exchange's regulatory budget and inquiring into the adequacy of resources available in the budget for regulatory activities; meeting regularly with the Exchange's Chief Regulatory Officer in executive session; and having oversight over compensation, hiring and termination decisions affecting this key officer as discussed above.

As it relates to the general supervision over the corporate governance of the Exchange, the full Board would perform such functions without the use of a corporate governance committee, similar to the boards of the Nasdaq Exchanges.[110] In particular, the full Board, led by the Chair of the Board,[111] would perform annual self-assessments, oversee annual formal director and Chair evaluations, and periodically review the allocations of powers between management and the Board. Therefore, the Exchange believes that the duties and functions of the eliminated Corporate Governance Committee would continue to be performed and covered in the new corporate governance structure proposed by the New Governing Documents.

Proposed Committees Not Composed Solely of Directors

In addition to the proposed Board committees discussed above, new Section 6 of Bylaw Article III provides for the appointment by the Board of certain standing committees, not composed solely of Directors, to administer various provisions of the rules that the Exchange expects to propose with respect to governance, options trading and member discipline. By adopting Section 6, the Exchange proposes to eliminate certain standing committees and have their relevant functions performed by the new committees, each as described below.

Creation of a Member Nominating Committee

The new Member Nominating Committee, responsible for: (i) The nomination for election of Member Representative Directors to the Board or (ii) the nomination for appointment of Member Representative members to the committees requiring such members, would replace the Exchange Director Nominating Committee. The composition requirements of the Member Nominating Committee are discussed in the Nomination and Election Process section above.

Creation of a Nominating Committee

The new Nominating Committee will nominate candidates for all other vacant or new Director positions on the Board, and therefore, would perform the non-industry representative nomination function currently assigned to the Corporate Governance Committee. The Nominating Committee will consist of no fewer than six and no more than nine members, and the number of Non-Industry members (*i.e.* committee members not associated with broker-dealers) shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public members. If the Nominating Committee consists of seven or more members, at least three shall be Public members. No officer or employee of the Exchange shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry members shall be current Directors. A Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee. Nominating Committee members will be appointed annually by the Board and may be removed by a majority vote of the Board.[112]

Creation of a Quality of Markets Committee

The new Quality of Markets Committee (the ''QMC''), which is modeled off of the QMCs of the Nasdaq Exchanges,[113] will have the following functions: (i) To provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and

recuse themselves from a vote on the subject to allow the determination to be made by directors that are not officers or employees of the Exchange. If a Staff Director was an officer or employee of the Exchange but not of HoldCo, that Staff Director would also absent himself or herself from any deliberations regarding his or her compensation.

[107] *See* note 102 above.

[108] The committee must consist of at least three directors, all of whom are required to meet the ''Non-Industry Director'' standards under the Current Constitution. *See* Current Constitution, Section 5.4.

[109] *See* proposed Section 6(b) of Bylaw Article III.

[110] *See* the Corporate Governance Guidelines of NSM, Phlx and BX (available at *http://ir.nasdaq.com/corporate-governance-document.cfm?DocumentID=6027*).

[111] The Board Chair will be an ''independent director'' (*i.e.* person other than an officer or employee of HoldCo or its subsidiaries, including the Exchange) as provided under the listing rules of NSM and SEC requirements.

[112] *See* Section 6(b) of NSM Bylaw Article III, Section 4.14(b) of the BX Bylaws and Section 5–3(a) of the Phlx Bylaws for similar provisions related to the Nominating Committee.

[113] *See* Section 6(c) of NSM Bylaw Article III, Section 4.14(c) of the BX Bylaws and Section 5–3(c) of the Phlx Bylaws.

competitiveness of the information, order handling, and execution mechanisms of the Exchange from the perspective of investors, both individual and institutional, retail firms, market making firms and other market participants; and (ii) to advise the Board with respect to national market system plans and linkages between the facilities of the Exchange and other markets. The QMC shall include broad representation of participants in the Exchange, including investors, market makers, retail firms, and order entry firms. The QMC shall include a number of Member Representative members that is equal to at least 20% of the total number of members of the QMC. The number of Non-Industry members on the proposed QMC shall equal or exceed the sum of the number of Industry members and Member Representative members. A quorum of the QMC will consist of a majority of its members, including not less than 50% of its Non-Industry members, unless this requirement is waived pursuant to proposed Section 6(c)(iii) of Bylaw Article III.

Other Proposed Bylaw Provisions

Proposed Section 7 of Bylaw Article III contains standard provisions for a Delaware limited liability company requiring recusal by Directors or committee members subject to a conflict of interest, and providing for the enforceability of contracts in which a Director has an interest if appropriately approved or ratified by disinterested Directors. This language is based on Section 7 of NSM Bylaw Article III. Proposed Section 8 of Bylaw Article III allows for reasonable compensation of the Board and committee members, and mirrors Section 8 of NSM Bylaw Article III.

Bylaw Article IV, titled ''Officers, Agents, and Employees,'' contains provisions governing the Exchange's officers, agents and employees, and is based on Article IV of the NSM Bylaws. Proposed Section 1 of Bylaw Article IV provides that the Board may delegate the duties and powers of any officer of the Exchange to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient. Proposed Section 2 discusses how an officer of the Exchange may resign or may be removed. Proposed Sections 3 through 11 each specifically provides for the appointment of a Chair of the Board,[114] a Chief Executive Officer, a President, Vice Presidents, a Chief Regulatory Officer, a Secretary, an Assistant Secretary, a Treasurer, and an Assistant Treasurer.[115] The Exchange notes that proposed Section 7 of Bylaw Article IV specifically provides for a Chief Regulatory Officer,[116] who would have general supervision of the regulatory operations of the Exchange, including responsibility for overseeing the Exchange's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another SRO to which the Exchange is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Exchange in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory Officer or any member of the Regulatory Oversight Committee. The Chief Regulatory Officer may also serve as the General Counsel of the Exchange.

Bylaw Article VII, titled ''Miscellaneous Provisions,'' contains standard limited liability company provisions relating to waiver of notice of meetings and the Exchange's contracting ability. Article VIII, titled ''Amendments; Emergency By-Laws,'' authorizes amendments to the By-Laws by either the Sole LLC Member or the vote of a majority of the whole Board,[117] as well as the adoption of emergency by-laws by the Board. Other than as noted above, Articles VII and VIII mirror the language in Articles VII and VIII of the NSM Bylaws.

Article IX, titled ''Exchange Authorities,'' which mirrors NSM Bylaw Article IX, contains specific authorization for the Board to adopt rules needed to effect the Exchange's obligations as an SRO, to establish disciplinary procedures and impose sanctions on its members, to establish standards for membership, to impose dues, fees, assessments, and other charges and to take action under emergency or extraordinary market conditions.

D. Rules

The Exchange proposes to amend its current Rules to reflect the changes to its constituent documents through the adoption of the New Governing Documents to replace the Current Governing Documents.[118] All of the proposed changes are non-substantive, and primarily reflect the changing terminology from ''Constitution'' to ''By-Laws,'' [119] or to remove references to the Current LLC Agreement [120] as these will become obsolete under the Proposed Rule Change. Furthermore, a number of defined terms used in the Rules refer back to the Current LLC Agreement or the Current Constitution for their meanings. As discussed below, the Exchange proposes to add these defined terms originally contained in the Current Governing Documents as new Rules. In addition, a number of existing Rules contain references to the Current Governing Documents, and the Exchange proposes to amend these provisions either by (i) replacing those references with references to the New Governing Documents or (ii) importing language originally found in the Current Governing Documents, as further described below. Finally, the Exchange proposes to make a number of technical amendments to renumber the Rules, which is a result of adding the new definitions as further discussed below.

In Rule 100, titled ''Definitions,'' the Exchange proposes to make the following changes:

- Rule 100(a) currently refers to Article XIII of the Current Constitution as containing certain defined terms that are also used in the Exchange's rulebook. The proposed change would replace the reference to Article XIII of the Current Constitution with references to the proposed LLC Agreement and By-Laws.
- Rule 100(a)(5) ''board of directors'' or ''Board'' currently refers to Article I of the LLC Agreement. The proposed change reflects that this definition will be set forth in Article I of the new Bylaws.
- Rule 100(a)(12) ''CMM Rights'' currently refers to Article VI of the Current LLC Agreement. The proposed change would relocate the concept of CMM Rights from the Current LLC Agreement to this Rule, and would state that the term CMM Rights means the

[114] The Chair of the Board would be an independent Director as defined in Rule 5605 of the listing rules of The NASDAQ Stock Market, LLC.

[115] *See* NSM Bylaw Article IV for substantially similar provisions.

[116] Sections 4.1 and 4.7 of the Current Constitution also specifically provide for a Chief Regulatory Officer.

[117] As proposed, all such changes must be filed with the Commission under Section 19(b) of the Act, 15 U.S.C. 78s(b), and become effective thereunder before being implemented. *See* proposed Bylaw Article VIII, Section 1. The BX Bylaws and the NSM Bylaws do not have a similar requirement, but Phlx has a similar requirement in Section 6–9 of the Phlx Bylaws. BX and NSM will each separately file proposed rule changes with the Commission to add this requirement in their respective governing documents. *See* note 46 above.

[118] The amended Rules were filed as part of the Proposed Rule Change as Exhibit 5E.

[119] In particular, the proposed changes are in Rules 200, 202, 203, 305(a), 307(c), 307(d), and 711(a), as well as in .01(b)(2)(iii) of Supplementary Material to Rule 706.

[120] In particular, the proposed changes are in Rules 100(a)(22A), 302(c), and 302(e).

non-transferable rights held by a Competitive Market Maker.[121]

• New Rule 100(a)(13) ''Competitive Market Maker'' would be relocated from Section 13.1(f) of the Current Constitution. Currently, this term is used throughout the Exchange's rulebook, but the definition is only found in the Current Constitution.

• Rules 100(a)(13)–(14) ''covered short position'' and ''discretion,'' respectively, would be renumbered as Rules 100(a)(14)–(15).

• Rule 100(a)(15) ''EAM Rights'' currently refers to Article VI of the Current LLC Agreement. The proposed change would relocate the concept of EAM Rights from the Current LLC Agreement to this Rule, and would state that EAM Rights means the non-transferable rights held by an Electronic Access Member.[122] The Rule would also be renumbered as Rule 100(a)(16).

• New Rule 100(a)(17) ''Electronic Access Member'' would be relocated from Section 13.1(j) of the Current Constitution. Currently, this term is used throughout the Exchange's rulebook, but the definition is only found in the Current Constitution.

• Rules 100(a)(16) and (17) ''European-style option,'' ''Exchange Act'' and ''Exchange Rights,'' respectively, would be renumbered as Rules 100(a)(18)–(20).[123]

• New Rule 100(a)(21) ''Exchange Transaction'' would be relocated from Section 13.1(p) of the Current Constitution. Currently, this term is used throughout the Exchange's rulebook, but the definition is only found in the Current Constitution.

• Rules 100(a)(18) and (19) ''exercise price'' and ''Federal Reserve Board,'' respectively, would be renumbered as Rules 100(a)(22) and (23).

• New Rule 100(a)(24) ''good standing'' would be relocated from Section 13.1(q) of the Current Constitution. Currently, this term is used throughout the Exchange's rulebook, but the definition is only found in the Current Constitution.

• Rules 100(a)(20)–(22) ''he,'' ''him'' or ''his,'' ''ISE,'' ''Nasdaq GEMX,'' and ''long position,'' respectively, would be renumbered as Rules 100(a)(25)–(27).

• Rule 100(a)(22A) ''LLC Agreement'' would be deleted as that term would no longer be used in the Rules, as amended by this rule change.

• Rules 100(a)(23)–(35) ''Member,'' ''Membership,'' ''market makers,'' ''Market Maker Rights,'' ''Non-Customer,'' ''Non-Customer Order,'' ''offer,'' ''opening purchase transaction,'' ''opening writing transaction,'' ''Voluntary Professional,'' ''options contract,'' ''OPRA,'' ''order'' and ''outstanding,'' respectively, would be renumbered as Rules 100(a)(28)–(40).

• Rule 100(a)(36) ''PMM Rights'' currently refers to Article VI of the Current LLC Agreement. The proposed change would relocate the concept of PMM Rights from the Current LLC Agreement to this Rule, and would state that PMM Rights means the non-transferable rights held by a Primary Market Maker.[124] The Rule would also be renumbered as Rule 100(a)(41).

• New Rule 100(a)(42) ''Primary Market Maker'' would be relocated from Section 13.1(z) of the Current Constitution. Currently, this term is used throughout the Exchange's rulebook, but the definition is only found in the Current Constitution.

• Rules 100(a)(37), (37A), (37B), (37C), (38)–(48) ''primary market,'' ''Priority Customer,'' ''Priority Customer Order,'' ''Professional Order,'' ''Public Customer,'' ''Public Customer Order,'' ''put,'' ''Quarterly Options Series,'' ''quote'' or ''quotation,'' ''Rules of the Clearing Corporation,'' ''SEC,'' ''series of options,'' ''short position,'' ''Short Term Option Series'' and ''SRO,'' respectively, would be renumbered as Rules 100(a)(43), (43A), (43B), (43C), (44)–(54).

• New Rule 100(a)(55) ''System'' would be relocated from Section 13.1(ee) of the Current Constitution. Currently, this term is used throughout the Exchange's rulebook, but the definition is only found in the Current Constitution.

• Rules 100(a)(49)–(51) ''type of option,'' ''uncovered'' and ''underlying security,'' respectively, would be renumbered as Rules 100(a)(56)–(58).

In Rule 304(b), the Exchange is proposing to replace the references to the Current Governing Documents with the proposed Bylaws to state that no Exchange member shall exercise voting rights in excess of those permitted under the Bylaws.[125]

In Rule 309 ''Limitation on Affiliation between the Exchange and Members,'' the Exchange proposes to replace references to ''Exchange Director'' and ''Constitution'' with ''Member Representative Director'' and ''By-Laws,'' respectively, for the reasons discussed above. Lastly, the proposed changes in Rule 713(a) and Rule 720(a)(1) reflect the renumbering of the defined terms ''offer,'' ''quotations,'' ''Priority Customer Orders,'' ''Professional Orders,'' and ''Priority Customer.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[126] in general, and furthers the objectives of Section 6(b)(1) of the Act[127] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this proposal furthers the objectives of Section 6(b)(3) and (b)(5) of the Act[128] in particular, in that it is designed to assure a fair representation of Exchange members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; 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, and, in general to protect investors and the public interest.

The Exchange believes that its proposal to adopt the Board and committee structure and related nomination and election processes set forth in New Governing Documents are consistent with the Act, including Section 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. In general, the proposed changes would make the Exchange's Board and committee composition requirements, and related

[121] CMM Rights are non-transferable rights in that the holders of CMM Rights may not lease or sell these rights. As discussed in the LLC Agreement section above, all Exchange Rights (*i.e.,* PMM, CMM and EAM Rights) convey voting rights and trading privileges on the Exchange. From MRX's inception, the voting rights and trading privileges associated with the PMM, CMM, and EAM Rights have never been transferable. *See* MRX Approval Order.

[122] *See* note 121 above.

[123] ''European-style option'' and ''Exchange Act'' are both inadvertently numbered as Rule 100(a)(16) in the current Rules, so the proposed changes will renumber these Rules as Rules 100(a)(18) and (19), respectively.

[124] *See* note 121 above.

[125] *See* proposed Bylaw Article II, Section 2. An Exchange Member, either alone or together with its affiliates, may not cast votes representing more than 20% of the votes cast for a candidate. A similar 20% voting limitation is also in Section 6.3(b) of the Current LLC Agreement.

[126] 15 U.S.C. 78f(b).

[127] 15 U.S.C. 78f(b)(1).

[128] 15 U.S.C. 78f(b)(3) and (b)(5).

nomination and election processes, more consistent with those of its affiliates, BX, NSM and Phlx. The Exchange therefore believes that the proposed changes would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and comply with the provisions of the Act by its members and persons associated with members.

Additionally, the Exchange believes that the New Governing Documents support a corporate governance framework that is designed to insulate the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can carry out its regulatory obligations in furtherance of Section 6(b)(1) of the Act. Specifically, the Exchange believes that creation of a ROC, modeled on the approved ROCs of other Nasdaq Exchanges, and the inclusion of the Chief Regulatory Officer in the proposed Bylaws, would underscore the importance of the Exchange's regulatory function and specifically empower an independent committee of the Board to oversee regulation and meet regularly with the Chief Regulatory Officer. Furthermore, proposed language in the New Governing Documents specifically providing that the Exchange's business and the Board's evaluations would include actions and evaluations that support and take into account its regulatory responsibilities under the Act, reinforce the notion that the Exchange is not solely a commercial enterprise, but an SRO subject to the obligations imposed by the Act. The restriction on using Regulatory Funds to pay dividends to the Sole LLC Member further underscores the independence of the Exchange's regulatory function. Finally, the Exchange believes that the proposed requirements to include Public Directors on the Board (at least two Directors) and that on the ROC (all three Directors) would help to ensure that no single group of market participants will have the ability to systematically disadvantage other market participants through the exchange governance process, and would foster the integrity of the Exchange by providing unique, unbiased perspectives. Accordingly, the Exchange believes that the new board and committee structure contemplated by the proposed New Governing Documents is designed to insulate the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can carry out its regulatory obligations in furtherance of Section 6(b)(1) of the Act.

The Exchange also believes that the proposed 20% requirement for Member Representative Directors and the proposed method for selecting Member Representative Directors would ensure fair representation of Exchange members on the Board and allow members to have a voice in the Exchange's use of its self-regulatory authority. In particular, the Exchange notes that the Member Nominating Committee would be composed solely of persons associated with Exchange members and is selected after consultation with representatives of Exchange members. In addition, the new Bylaws include a process by which Exchange members can directly petition and vote for representation on the Board. For the foregoing reasons, the Exchange believes that the proposed change to remove the Exchange Director positions and related concepts from its organizational documents is consistent with fair representation requirement under the Act. Specifically, Exchange members will continue to be represented on the Board and on key standing committees, and will have a voice in the selection of Member Representative Directors through the Member Nominating Committee and through their ability to petition and vote on alternate candidates. As noted above, the trading privileges associated with the Exchange Rights, which are currently located in the Exchange's organizational documents, are already substantively in the Exchange's rulebook, and the Rules would be clarified to the extent such Rules refer back to the Current Governing Documents.

The Exchange also believes that the proposed Board and composition requirements set forth in the New Governing Documents is consistent with the requirements of Section 6(b)(3) of the Act, because the Public Director positions on the Board and on the ROC would include the representatives of issuers and investors with no material business relationship with a broker dealer or the Exchange. Further, the Exchange believes that the proposed compositional balance of the proposed committees continues to provide for the fair representation of members in the administration of the affairs of the Exchange. In particular, all members of the new Member Nominating Committee must be associated persons of an Exchange member. In addition, at least 20% of the new QMC must be composed of Member Representative members. Moreover, the proposed compositional requirements provide that the Nominating Committee and the QMC must be compositionally balanced between Industry members and Non-Industry members. The proposed compositional requirements are designed to ensure that members are protected from unfair, unfettered actions by an exchange pursuant to its rules, and that, in general, an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.

Moreover, the Exchange believes that the new corporate governance framework and related processes proposed by the New Governing Documents are consistent with Section 6(b)(5) of the Act because they are identical to the framework and processes used by the Nasdaq Exchanges, which have been well-established as fair and designed to protect investors and the public interest. The Exchange believes that adopting the New Governing Documents based on the NSM model would streamline the Nasdaq Exchanges' governance process, create equivalent governing standards among HoldCo's SROs and also provide clarity to its members, which is beneficial to both investors and the public interest.

Finally, the proposed amendments to the Rules as discussed above are non-substantive changes to clarify the rule text where the Rule referred only to the Current LLC Agreement or to the Current Constitution, and also the technical amendments to renumber certain Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the Proposed Rule Change relates to the corporate governance of the Exchange and not to the operations of the Exchange, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–MRX–2017–18 *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–MRX–2017–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2017–18 and should be submitted on or before October 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[129]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21538 Filed 10–5–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81796; File No. SR–NYSEArca–2017–105]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees and Charges Relating to the Listing Fees Applicable to Exchange Traded Products

October 2, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 19, 2017, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's ''Schedule of Fees and Charges'' relating to the Listing Fee applicable to Exchange Traded Products, effective September 19, 2017. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Exchange's Schedule of Fees and Charges (''Schedule'') relating to the ''Listing Fee'' applicable to Exchange-Traded Products (''ETPs''), effective September 19, 2017, as described below.[4]

Currently the Schedule does not impose a Listing Fee for the following ETPs listed on the Exchange pursuant to Rule 19b–4(e) under the Act, and for which a proposed rule change pursuant to Section 19(b) of the Act is not required to be filed with the Commission: [5] Investment Company Units; Portfolio Depositary Receipts; Currency Trust Shares and Managed Fund Shares (collectively, ''Generically-Listed Exchange Traded Products'').[6]

Certain other ETPs—specifically, Trust Issued Receipts,[7] Commodity-

[129] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] For the purposes of the Schedule, the term ''Exchange Traded Products'' includes securities described in NYSE Arca Rules 5.2–E(j)(3) (Investment Company Units); 8.100–E (Portfolio Depositary Receipts); 8.200–E (Trust Issued Receipts); 8.201–E (Commodity-Based Trust Shares); 8.202–E (Currency Trust Shares); 8.203–E (Commodity Index Trust Shares); 8.204–E (Commodity Futures Trust Shares); 8.300–E (Partnership Units); 8.500–E (Trust Units); 8.600–E (Managed Fund Shares), and 8.700–E (Managed Trust Securities).

[5] Exchange rules applicable to Trust Issued Receipts (Commentary .02 to NYSE Arca Rule 8.200–E); Commodity-Based Trust Shares (NYSE Arca Rule 8.201–E), Commodity Index Trust Shares (NYSE Arca Rule 8.203–E),, [sic] Commodity Futures Trust Shares (NYSE Arca Rule 8.204–E), Partnership Units (NYSE Arca Rule 8.300–E), Trust Units (NYSE Arca Rule 8.500–E), and Managed Trust Securities (NYSE Arca Rule 8.700–E) do not provide for listing pursuant to Rule 19b–4(e) under the Act.

[6] *See* Securities Exchange Act Release Nos. 77883 (May 23, 2016), 81 FR 33720 (May 27, 2016) (SR–NYSEArca–2016–69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Schedule of Fees and Charges to Eliminate the Listing Fee in Connection with Exchange Listing of Certain Exchange Traded Products); 78633 (August 22, 2016), 81 FR 59025 (August 26, 2016) (SR–NYSEArca–2016–114) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Schedule of Fees and Charges to Eliminate the Listing Fee in Connection with Exchange Listing of Certain Exchange Traded Products).

[7] Commentary .01 to NYSE Arca Rule 8.200–E provides generic standards for listing Trust Issued Receipts pursuant to Rule 19b–4(e) under the Act. However, the Exchange does not currently intend to list Trust Issued Receipts under Commentary .01,

Continued

Based Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, and non-generically-listed Investment Company Units, Portfolio Depositary Receipts, Managed Fund Shares, and Currency Trust Shares—are subject to a Listing Fee of $7,500.[8] Under Item 5b of the Schedule, Managed Trust Securities are subject to a Listing Fee of $10,000.

The Exchange proposes to amend the Listing Fee applicable to ETPs in two respects. First, the Exchange proposes to reduce the listing fee for Managed Trust Securities from $10,000 to $7,500. Thus, under the proposed change, the same Listing Fee of $7,500 would apply to all non-generically listed ETPs.

Second, the Exchange proposes to amend the Schedule to provide that, if three or more issues of ETPs, other than Generically-Listed Exchange Traded Products, are issued by the same issuer and are listed on the Exchange in the same calendar year, such issues will be subject to an aggregate maximum Listing Fee of $22,500 for all such listed issues combined.[9]

The Exchange believes reducing the Listing Fee for Managed Trust Securities would result in a uniform Listing Fee for all non-generically listed ETPs and would help correlate the Listing Fee to the resources required to list such issues on the Exchange. The Exchange believes it is appropriate to continue to charge a Listing Fee for ETPs for which a proposed rule change pursuant to Section 19(b) of the Act is required to be filed because of the additional time and resources required by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings.

With respect to the aggregate maximum Listing Fee of $22,500 for three or more ETPs, as described above, the Exchange believes it is appropriate to provide a cap on the Listing Fee for multiple ETPs from the same issuer, as described above, because such a cap will facilitate the issuance of additional ETPs, which may provide enhanced competition among ETP issuers, while providing a reduction in fees to certain issuers listing multiple ETPs during a calendar year. The proposed cap would apply equally to all issuers listing multiple ETPs on the Exchange during a calendar year. The Exchange believes that a Listing Fee cap, as described above, is appropriate in such cases because the Exchange experiences efficiencies commensurate with the proposed Listing Fee cap in working with issuers on a repeated basis in connection with developing and listing multiple ETPs.

Annual Fees set forth in the Schedule applicable to ETPs would remain unchanged.

Notwithstanding the reduction of the Listing Fee applicable to Managed Trust Securities, as well as the cap of $22,500 for multiple listings of ETPs by the same issuer in a calendar year, as described above, the Exchange will continue to be able to fund its regulatory obligations.

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)[10] of the Act, in general, and Section 6(b)(4)[11] of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities. In addition, the Exchange believes the proposal is consistent with the requirement under Section 6(b)(5)[12] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed reduction of the Listing Fee for Managed Trust Securities, as described above, is equitable and does not unfairly discriminate among issuers because it would apply uniformly to all such issues listed under Exchange rules. In addition, all ETPs other than Generically-Listed Exchange Traded Products would be subject to the same Listing Fee following the proposed Listing Fee reduction.

With respect to the aggregate maximum Listing Fee of $22,500 for three or more ETPs, as described above, the Exchange believes it is appropriate to provide a cap on the Listing Fee for multiple ETPs from the same issuer because such a cap will facilitate the issuance of additional ETPs, which may provide enhanced competition among ETP issuers, while providing a reduction in fees to certain issuers listing multiple ETPs during a calendar year. The proposed cap would apply equally to all issuers listing multiple ETPs on the Exchange during a calendar year. The Exchange believes that a Listing Fee cap, as described above, is appropriate in such cases because the Exchange experiences efficiencies commensurate with the proposed Listing Fee cap in working with issuers on a repeated basis in connection with developing and listing multiple ETPs.

The Exchange believes it is appropriate to continue to charge a Listing Fee for ETPs for which a proposed rule change pursuant to Section 19(b) of the Act is required to be filed because of the significant additional extensive time, legal and business resources required by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change would promote competition because it will reduce the Listing Fee for Managed Trust Securities and cap the aggregate Listing Fee for multiple issues of ETPs in the same calendar year by the same issuer at $22,500, thereby encouraging issuers to develop and list additional such issues on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

but instead lists Trust Issued Receipts under Commentary .02 to NYSE Arca Rule 8.200–E, which does not provide generic standards for listing pursuant to Rule 19b–4(e) under the Act. Before listing any Trust Issued Receipts pursuant to Commentary .01 to NYSE Arca Rule 8.200–E, the Exchange will first file a proposed rule change with respect to the Listing Fee applicable to any such generically-listed securities.

[8] Exchange rules applicable to Trust Issued Receipts (Commentary .02 to NYSE Arca Rule 8.200–E); Commodity-Based Trust Shares (NYSE Arca Rule 8.201–E), Commodity Index Trust Shares (NYSE Arca Rule 8.203–E),, [sic] Commodity Futures Trust Shares (NYSE Arca Rule 8.204–E), Partnership Units (NYSE Arca Rule 8.300–E), Trust Units (NYSE Arca Rule 8.500–E), and Managed Trust Securities (NYSE Arca Rule 8.700–E) do not provide for listing pursuant to Rule 19b–4(e) under the Act.

[9] With respect to the aggregate maximum Listing Fee of $22,500, the Exchange would not apply this provision retroactively, and the Exchange would not provide a refund of Listing Fees to an issuer that has listed four or more ETP issues in 2017 or prior calendar years.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [13] of the Act and subparagraph (f)(2) of Rule 19b–4 [14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2017–105 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–NYSEArca–2017–105. 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–NYSEArca–2017–105 and should be submitted on or before October 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21539 Filed 10–5–17; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81792; File No. SR–NYSEArca–2017–113]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect a Change to the Administrator for the London Bullion Market Association Silver Price to ICE Benchmark Administration

October 2, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 21, 2017, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect a change to the administrator for the London Bullion Market Association (''LBMA'') Silver Price from CME Group, Inc. and Thomson Reuters to ICE Benchmark Administration, effective as of October 2, 2017. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reflect a change to the administrator for the LBMA Silver Price from CME Group, Inc. (''CME'') and Thomson Reuters to ICE Benchmark Administration (''IBA''), effective as of October 2, 2017, as described further below.[3] The LBMA Silver Price is the price used with respect to calculation of the net asset value for the iShares Silver Trust,[4] ETFS

[3] *See* press release dated July 14, 2017 from Intercontinental Exchange (''ICE'') and the LBMA announced [sic] that IBA has been chosen as the new administrator for the LBMA Silver Price, which is available here: *http://www.lbma.org.uk/_blog/lbma_media_centre/post/ice-benchmark-administration-to-take-over-administration-of-the-lbma-silver-price/. See also,* ICE press release dated September 21, 2017, ''ICE Benchmark Administration to Launch LBMA Silver Price on 2 October 2017'', which is available here: *http://ir.theice.com/press/press-releases/all-categories/2017/09-21-2017-110006932?=news_promo.*

[4] *See* Securities Exchange Act Release Nos. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca 2008–124) (approving listing on the Exchange of the iShares Silver Trust); 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (order approving listing and trading of shares of the iShares Silver Trust pursuant to unlisted trading privileges); 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006)

Continued

Silver Trust,[5] and ETFS Precious Metals Basket Trust [6] (together, the ''Silver Trusts''), each of which is currently listed on the Exchange under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), and is the underlying benchmark for ProShares Ultra Silver and ProShares UltraShort Silver (together, the ''Silver Funds''),[7] each of which is currently listed on the Exchange under NYSE Arca Rule 8.200–E (Trust Issued Receipts).

Revised Procedures for the LBMA Silver Price [8]

On July 14, 2017, the LBMA announced that IBA [9] has been selected to be the third-party administrator for the ''LBMA Silver Price.'' IBA, an independent specialist benchmark administrator, will provide the auction platform and methodology as well as the overall administration and governance for the LBMA Silver Price benchmark.

As the administrator for the LBMA Silver Price benchmark and the operator of the ''IBA Silver Auction,'' IBA will implement procedures that provide a physically settled, electronic and tradeable auction, with the ability to settle trades in U.S. Dollars (''USD''), euros or British Pounds.[10] Each London business day, at 12 p.m. (noon) IBA runs an auction to determine the final price to use as the benchmark. The benchmark is published when the auction finishes, typically a few minutes after 12 p.m. IBA will use ICE's front-end system—*WebICE*—as the technology platform that will allow direct participants, as well as sponsored clients of direct participants, to manage their orders in the auction in real time via their desktops.[11]

Participants in the auction will include direct participants and sponsored clients of direct participants. Direct participants may enter orders on their own behalf or on behalf of clients. Sponsored clients also may manage their own positions utilizing their own trading screens; however, a sponsored client's orders would be backed by the sponsoring direct participant. WebICE allows sponsored clients to participate in the auction process with the same information and order management capabilities as direct participants.

At the opening of each auction, the auction chairman (''Chairman'') will announce an opening price (in USD) based on the current market conditions and begin auction rounds, with an expected duration of at least every 30 seconds each. During each auction round, participants may enter the volume they wish to buy or sell at that price, and such orders will be part of the price formation. Aggregate bid and offer volume will be shown live on WebICE, providing a level playing field for all participants. At the end of each auction round, the total net volume will be calculated. If this 'imbalance' is larger than the imbalance tolerance (currently set at 500,000 oz) then the Chairman will choose a new price [12] (based on the current market conditions, and the direction and magnitude of the imbalance in the round) and begin a new auction round. If the imbalance is less than the tolerance, then the auction is complete with all volume tradeable at that price. The price will then be set in USD and also converted into in euros and British Pounds. The auction will continue to be run at 12:00 p.m. (London time).

During the auction, the price at the start of each round, and the volumes at the end of each round will be available through major market data vendors. As soon as the auction finishes, the final prices and volumes will be available through major market data vendors. IBA will also publish transparency reports, detailing the prices, volumes and times for each round of the auction. These transparency reports will be available through major market data vendors and IBA when the auction finishes. The process can also be observed real-time through a WebICE screen. The auction mechanism will provide a complete audit trail.

As of August 1, 2017, there were seven direct participants in the LBMA Silver Price administered by CME and Thomson Reuters. The number of direct participants upon IBA's assumption of the role of LBMA Silver Price administrator is expected to equal or exceed the number of market participants currently participating in the auction process that determines the LBMA Silver Price.

Regulation of the LBMA Silver Price

As of April 1, 2015, the LBMA Silver Price has been regulated by the Financial Conduct Authority (''FCA'') in the United Kingdom (''UK'').[13] IBA is already authorized as a regulated benchmark administrator by the FCA. Under the UK benchmark regulation,[14]

(SR–Amex–2005–72) (order approving listing and trading on the American Stock Exchange LLC of shares of the iShares Silver Trust).

[5] *See* Securities Exchange Act Release No. 59781 (April 17, 2009), 78 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28) (notice of filing and order granting accelerated approval relating to listing and trading of shares of the ETFS Silver Trust).

[6] *See* Securities Exchange Act Release No. 62402 (June 29, 2010), 75 FR 39292 (July 8, 2010) (SR–NYSEArca–2010–56) (notice of filing of proposed rule change to list and trade shares of the ETFS Precious Metals Basket Trust); 62692 (August 11, 2010), 75 FR 50789 (August 17, 2010) (order approving proposed rule change to list and trade shares of the ETFS Precious Metals Basket Trust).

[7] *See* Securities Exchange Act Release Nos. 58457 (September 3, 2008), (73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91) (notice of filing and order granting accelerated approval of proposed rule change regarding listing and trading of shares of 14 funds of the Commodities and Currency Trust, now the ProShares Trust II); 58162 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR–NYSEArca–2008–73) (notice of filing and immediate effectiveness of proposed rule change relating to trading of shares of 14 funds of the Commodities and Currency Trust pursuant to unlisted trading privileges). *See also* Securities Exchange Act Release Nos. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39) (order approving listing and trading on the American Stock Exchange LLC of shares of 14 funds of the Commodities and Currency Trust); 57932 (June 5, 2008), 73 FR 33467 (June 12, 2008) (notice of proposed rule change regarding listing and trading of shares of 14 funds of the Commodities and Currency Trust).

[8] In connection with implementation of the LBMA Silver Price as a replacement for the London Silver Fix, the Exchange filed a proposed rule change regarding procedures to be implemented by CME as of August 14, 2014 in connection with administration of the LBMA Silver Price, as well as the change to the benchmark price for the Silver Trusts and the change to the underlying benchmark for the Silver Funds from the London Silver Fix to the LBMA Silver Price. *See* Securities Exchange Act Release No. 72847 (August 14, 2014), 79 FR 49350 (August 20, 2014) (SR–NYSEArca–2014–88) (notice of filing and immediate effectiveness of proposed rule change in connection with implementation of the LBMA Silver Price). *See also* Securities Exchange Act Release No. 77830 (May 13, 2016), 81 FR 31671 (May 19, 2016) (SR–NYSEArca–2016–72) (notice of filing and immediate effectiveness of proposed rule change relating to changes to procedures regarding establishing the LBMA Silver Price).

[9] IBA is a London-based company that was created specifically to administer systemically important benchmarks. Formed in 2013, IBA is part of ICE.

[10] The procedures to be utilized by IBA will be similar to those that IBA utilizes in connection with its administration of the LBMA Gold Price. *See* Securities Exchange Act Release No. 74544 (March 19, 2015), 80 FR 15840 (March 25, 2015) (SR–NYSEArca–2015–19) (notice of filing and immediate effectiveness of proposed rule change relating to the LBMA Gold Price as a replacement for the London Gold Fix for certain gold related exchange traded products).

[11] The WebICE platform provides real-time order management as well as separation of direct participant and sponsored client orders, live credit limit controls, audit history, advanced Excel integration and automated deal notifications.

[12] The Chairman will have significant experience in the silver markets and will be employed by IBA.

[13] The conduct of financial institutions is overseen by the FCA, which was formed from the former Financial Services Authority and is separate from the Bank of England. The LBMA Silver Price is regulated under the FCA's Market Conduct (MAR) Sourcebook (MAR 8.3).

[14] On June 12, 2014, the UK Chancellor of the Exchequer announced steps to raise standards of conduct in the financial system with a joint review by the UK Treasury, the Bank of England and the FCA into the way wholesale financial markets operate. According to this announcement, the ''Fair and Effective Markets Review'', led by Bank of England Deputy Governor for Markets and Banking, has been tasked with investigating those wholesale markets, both regulated and unregulated, where most of the recent concerns about misconduct have

the governance structure for a regulated benchmark must include an Oversight Committee, made up of market participants, industry bodies, direct participant representatives, infrastructure providers and the administrator (*i.e.,* IBA).[15] Through the Oversight Committee, the LBMA will continue to have significant involvement in the oversight of the auction process, including, among other matters, changes to the methodology and accreditation of direct participants.[16]

The price discovery process for the LBMA Silver Price will be subject to surveillance by IBA. IBA is compliant with the UK benchmark regulation (MAR 8.3), regulated by the FCA, and has been formally assessed against the IOSCO Principles for Financial Benchmarks (the ''IOSCO Principles'').[17] In order to meet the IOSCO Principles, the price discovery used for the LBMA Silver Price benchmark will be auditable and transparent.

The LBMA Silver Price benchmark is viewed as a full and fair representation of all market interest at the conclusion of the auction. IBA's auction process will be fully transparent in real time to direct participants and sponsored clients and, at the close of each auction, to the general public. The auction process also will be fully auditable since an audit trail exists for every change made in the process. Moreover, the audit trail and active surveillance of the auction process by IBA, as well as FCA's oversight of IBA, will deter manipulative and abusive conduct in establishing each day's LBMA Silver Price.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[18] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the LBMA Silver Price benchmark, as administered by IBA, will be based on an auction that is electronic and auditable and is produced from tradeable volumes. The LBMA Silver Price and the transparency reports showing the prices, timings and total volumes for each round will be available electronically instantly after the conclusion of the auction, as described above. The LBMA Silver Price benchmark is viewed as a full and fair representation of all market interest at the conclusion of the auction. IBA's auction process will be fully transparent in real time to direct participants and sponsored clients and, at the close of each auction, to the general public. The auction process also will be fully auditable since an audit trail exists for every change made in the process. Moreover, the audit trail and active surveillance of the auction process by IBA, as well as FCA's oversight of IBA, will deter manipulative and abusive conduct in establishing each day's LBMA Silver Price.

The proposed rule change is designed to perfect the mechanism of a free and open market price discovery process and, in general, to protect investors and the public interest in that the silver auction will be transparent, auditable, and operated by a regulated benchmark administrator (IBA). The LBMA Silver price is widely disseminated by major market data vendors. The audit trail records every change made in the process and IBA has regulatory obligations to run surveillance on the activity in the process to deter and identify manipulative and abusive conduct in establishing each day's LBMA Silver Price. The LBMA Silver Price, as administered by IBA, is designed to be a benchmark that meets

arisen: Fixed-income, currency and commodity markets, including associated derivatives and benchmarks. It will make recommendations on: Principles to govern the operation of fair and effective markets, focusing on fixed income, currency and commodities; reforms to ensure standards of behavior are in accordance with those principles; tools to strengthen the oversight of market conduct; whether the regulatory perimeter for wholesale financial markets should be extended, and to what extent international action is required; and additional reforms in relation to benchmarks, in order to strengthen market infrastructure. *See http://www.bankofengland.co.uk/markets/Documents/femraug2014.pdf.* On September 25, 2014, the Fair and Effective Markets Review announced its proposal that the silver fixing process may become regulated under UK benchmark regulation, effective from April 2015.

[15] The Oversight Committee is a key decision making forum, with market representation that includes participants, users and infrastructure providers. The Oversight Committee's responsibilities include review of methodology and process relating to the LBMA Silver Price; implementation of a Code of Conduct applicable to participants; expansion of membership; and surveillance oversight, among other functions. The Oversight Committee's structure and responsibilities is described in the Oversight Committee Terms of Reference, available on the IBA Web site.

[16] The LBMA will continue to provide guidance with respect to the LBMA Silver Price through the Oversight Committee, which will facilitate communication among representatives of all market participants to ensure the process continues to fulfill the needs of the market. The Oversight Committee is responsible for decisions that affect the evolution of the process based on changes in the market and regulatory environments.

The term ''LBMA Silver Price'' means the price for an ounce of silver set by LBMA-authorized participating bullion banks and market makers in the electronic, over-the-counter auction operated by IBA at approximately 12:00 noon London time, on each working day and disseminated also by IBA. IBA provides the electronic auction platform on which the price is calculated, while the LBMA accredits market participants. IBA is also responsible for governance and oversight of the LBMA Silver Price, and is regulated by the FCA for its role as the benchmark administrator.

The LBMA Silver Price is regulated under the FCA's Market Conduct (MAR) Sourcebook (MAR 8.3). As the administrator for the LBMA Silver Price, IBA will adopt and issue a Code of Conduct relating to administration of the LBMA Silver Price and undertake to perform the LBMA Silver Price administrator's responsibilities in accordance with MAR 8.3. Among such responsibilities are that the administrator:

(1) Have in place effective arrangements and procedures that allow the regular monitoring and surveillance of the auction process;

(2) monitor the benchmark submissions in order to identify breaches of its practice standards and conduct that may involve manipulation, or attempted manipulation, of the specified benchmark it administers and provide to the oversight committee of the specified benchmark timely updates of suspected breaches of practice standards and attempted manipulation;

(3) notify the FCA and provide all relevant information where it suspects that, in relation to the specified benchmark it administers, there has been (i) a material breach of the benchmark administrator's practice standards; (ii) conduct that may involve manipulation or attempted manipulation of the specified benchmark it administers; or (iii) collusion to manipulate or to attempt to manipulate the specified benchmark it administers;

(4) ensure that the specified benchmark it administers is determined using adequate benchmark submissions; and

(5) establish an oversight committee.

The LBMA Silver Price Oversight Committee reviews and maintains the definition, setting, scope and methodology of the benchmark. The Code of Conduct can be found on the IBA Web site *https://www.theice.com/iba.*

[17] The IOSCO Principles are designed to enhance the integrity, the reliability and the oversight of benchmarks by establishing guidelines for benchmark administrators and other relevant bodies in the following areas: Governance: To protect the integrity of the benchmark determination process and to address conflicts of interest; Benchmark quality: To promote the quality and integrity of benchmark determinations through the application of design factors; Quality of the methodology: To promote the quality and integrity of methodologies by setting out minimum information that should be addressed within a methodology. These principles also call for credible transition policies in case a benchmark may cease to exist due to market structure change. Accountability mechanisms: To establish complaints processes, documentation requirements and audit reviews. The IOSCO Principles provide a framework of standards that might be met in different ways, depending on the specificities of each benchmark. In addition to a set of high level principles, the framework offers a subset of more detailed principles for benchmarks having specific risks arising from their reliance on submissions and/or their ownership structure. For further information concerning the IOSCO Principles, *see http://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.*

[18] 15 U.S.C. 78f(b)(5).

the needs of the market and regulators (including the IOSCO Principles [19]).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will facilitate the continued administration of the LBMA Silver Price utilizing a fully auditable auction process and will promote market competition by permitting the continued listing and trading of shares of the Silver Trusts and the Silver Funds utilizing the LBMA Silver Price.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21] 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 [22] and Rule 19b–4(f)(6) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As noted above, the administrator for the LBMA Silver Price will change from CME and Thomson Reuters to IBA, effective October 2, 2017. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest as it will prevent the disruption in the trading of the Silver Trust and the Silver Fund shares. Therefore, the Commission designates the proposed rule change to be operative upon filing.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–113 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–NYSEArca–2017–113. 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–NYSEArca–2017–113 and should be submitted on or before October 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21536 Filed 10–5–17; 8:45 am]

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[19] *See* note 18, *supra.*

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[24] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81794; File No. SR–NYSEArca–2017–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Pursuant to NYSE Arca Rule 5.2–E(j)(3) Twelve Series of Investment Company Units

DATE: October 2, 2017.

I. Introduction

On June 19, 2017, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade certain series of Investment Company Units listed pursuant to NYSE Arca Rule 5.2–E(j)(3). The proposed rule change was published for comment in the **Federal Register** on July 7, 2017.[3] On August 7, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81062 (June 30, 2017), 82 FR 31651.

proposed rule change as originally filed.[4] On August 15, 2017, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] The Commission has received no comment letters on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to list and trade pursuant to NYSE Arca Rule 5.2–E(j)(3) shares (''Shares'') of the following series of Investment Company Units: (1) iShares National Muni Bond ETF; (2) iShares Short-Term National Muni Bond ETF; (3) VanEck Vectors AMT-Free Intermediate Municipal Index ETF; (4) VanEck Vectors AMT-Free Long Municipal Index ETF; (5) VanEck Vectors AMT-Free Short Municipal Index ETF; (6) VanEck Vectors High-Yield Municipal Index ETF; (7) VanEck Vectors Pre-Refunded Municipal Index ETF; (8) PowerShares VRDO Tax-Free Weekly Portfolio; (9) SPDR Nuveen Bloomberg Barclays Short Term Municipal Bond ETF; (10) SPDR Nuveen Bloomberg Barclays Municipal Bond ETF (collectively, the ''Multistate Municipal Bond Funds''); (11) iShares California Muni Bond ETF; and (12) iShares New York Muni Bond ETF (collectively, the ''Single-State Municipal Bond Funds'' and, together with the Multistate Municipal Bond Funds, the ''Municipal Bond Funds'').[8] The Single-State Municipal Bond Funds overlie an index comprised of the fixed income municipal bond securities of one State; the Multistate Municipal Bond Funds overlie an index comprised of the fixed income municipal bond securities of more than one State.

Commentary .02 to Rule 5.2(j)(3) sets forth the generic listing requirements for an index of fixed income securities underlying a series of Investment Company Units. One of the enumerated listing requirements is that component fixed income securities that, in the aggregate, account for at least 75% of the weight of the index each shall have a minimum principal amount outstanding of $100 million or more.[9] The Exchange states that none of the indexes underlying the Municipal Bond Funds satisfy this criterion but represents that each of the underlying indexes meet all of the other requirements of such rule.

A. The Exchange's Description of the Municipal Bond Funds and Their Underlying Indexes[10]

1. iShares National Muni Bond ETF

The iShares National Muni Bond ETF seeks to track the investment results of the S&P National AMT-Free Municipal Bond Index, which measures the performance of the investment grade segment of the U.S. municipal bond market. The S&P National AMT-Free Municipal Bond Index primarily includes municipal bonds from issuers that are state or local governments or agencies such that the interest on each such bond is exempt from U.S. federal income taxes and the federal alternative minimum tax. Each bond in the S&P National AMT-Free Municipal Bond Index must have a rating of at least BBB− by S&P Global Ratings (''S&P''), Baa3 by Moody's Investors Service, Inc. (''Moody's''), or BBB− by Fitch Ratings, Inc. (''Fitch''). Each bond in the S&P National AMT-Free Municipal Bond Index must be denominated in U.S. dollars, must be a constituent of an offering where the original offering amount was at least $100 million, and must have a minimum par amount of $25 million. To remain in the S&P National AMT-Free Municipal Bond Index, bonds must maintain a minimum par amount greater than or equal to $25 million as of the next rebalancing date.

As of April 1, 2017, the S&P National AMT-Free Municipal Bond Index included 11,333 component fixed income municipal bond securities from issuers in 47 different states or U.S. territories. The most heavily weighted security in the index represented approximately 0.25% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented less than 1% of the total weight of the index. Approximately 99.29% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 31.79% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $628,460,731,594, and the average dollar amount outstanding of issues in the index was approximately $55,454,048.

Generally, the iShares National Muni Bond ETF invests at least 90% of its assets in the component securities of the S&P National AMT-Free Municipal Bond Index and may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including shares of money market funds, as well as in securities not included in the S&P National AMT-Free Municipal Bond Index, but which the fund's investment advisor believes will help the fund track the S&P National AMT-Free Municipal Bond Index.

2. iShares Short Term National Muni Bond ETF

The iShares Short Term National Muni Bond ETF seeks to track the investment results of the S&P Short Term National AMT-Free Municipal Bond Index, which measures the performance of the short-term investment grade segment of the U.S. municipal bond market. The S&P Short Term National AMT-Free Municipal Bond Index primarily includes municipal bonds from issuers that are state or local governments or agencies such that the interest on each such bond is exempt from U.S. federal income taxes and the federal alternative minimum tax (''AMT''). Each bond in the S&P Short Term National AMT-Free Municipal Bond Index must have a rating of at least BBB− by S&P, Baa3 by Moody's, or BBB− by Fitch. Each bond in the S&P Short Term National AMT-Free Municipal Bond Index must be

[4] In Amendment No. 1, the Exchange: (1) Described the investment objective of each fund; (2) described investment eligibility criteria and restrictions for each fund; (3) clarified that the Web site for each fund will contain its prospectus and additional data; (4) clarified that the Exchange has obtained a representation from each fund issuer that the applicable net asset value for each fund will be calculated daily and made available to all market participants at the same time; (5) clarified that none of the indexes underlying the funds are maintained by a broker-dealer; and (6) made technical changes. Amendment No. 1 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-nysearca-2017-56/nysearca201756.htm*.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 81400, 82 FR 39643 (August 21, 2017). The Commission designated October 5, 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.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The Commission notes that, although the Shares do not meet the standards set forth in Commentary .02 to Rule 5.2–E(j)(3), the Exchange nevertheless listed the Shares prior to 2010.

[9] *See* Commentary .02(a)(2) to NYSE Arca Rule 5.2–E(j)(3).

[10] Additional information regarding the Funds and their underlying indexes can be found in Amendment No. 1. *See supra* note 4.

denominated in U.S. dollars, must be a constituent of an offering where the original offering amount was at least $100 million, and must have a minimum par amount of $25 million. To remain in the S&P Short Term National AMT-Free Municipal Bond Index, bonds must maintain a minimum par amount greater than or equal to $25 million as of the next rebalancing date.

As of April 1, 2017, the S&P Short Term National AMT-Free Municipal Bond Index included 3,309 component fixed income municipal bond securities from issuers in 44 different states or U.S. territories. The most heavily weighted security in the index represented approximately 1% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2% of the total weight of the index. Approximately 98.22% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 27.63% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $166,147,941,156, and the average dollar amount outstanding of issues in the index was approximately $50,210,922.

Generally, the iShares National Muni Bond ETF invests at least 90% of its assets in the component securities of the S&P Short Term National AMT-Free Municipal Bond Index and may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including shares of money market funds, as well as in securities not included in the S&P Short Term National AMT-Free Municipal Bond Index, but which the fund's investment advisor believes will help the fund track the S&P Short Term National AMT-Free Municipal Bond Index.

3. VanEck Vectors AMT-Free Intermediate Municipal Index ETF

The VanEck Vectors AMT-Free Intermediate Municipal Index ETF seeks to replicate as closely as possible, before fees and expenses, the price and yield performance of the Bloomberg Barclays AMT-Free Intermediate Continuous Municipal Index. The Bloomberg Barclays AMT-Free Intermediate Continuous Municipal Index is a market size weighted index comprised of publicly traded municipal bonds that cover the U.S. dollar-denominated intermediate term tax-exempt bond market. To be included in the Bloomberg Barclays AMT-Free Intermediate Continuous Municipal Index, a bond must be rated Baa3/BBB− or higher by at least two of the following ratings agencies if all three agencies rate the security: Moody's, S&P, and Fitch. If only one of the three agencies rates a security, the rating must be at least Baa3/BBB−. Constituent securities of the Bloomberg Barclays AMT-Free Intermediate Continuous Municipal Index must have an outstanding par value of at least $7 million and be issued as part of a transaction of at least $75 million.

As of April 1, 2017, the Bloomberg Barclays AMT-Free Intermediate Continuous Municipal Index included 17,272 component fixed income municipal bond securities from issuers in 50 different states or U.S. territories. The most heavily weighted security in the index represented less than 0.25% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 0.50% of the total weight of the index. Approximately 96.13% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 7.75% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $340,102,539,050, and the average dollar amount outstanding of issues in the index was approximately $19,690,976.

Normally, the VanEck Vectors AMT-Free Intermediate Municipal Index ETF invests at least 80% of its total assets in fixed income securities that comprise the Bloomberg Barclays AMT-Free Intermediate Continuous Municipal Index.

4. VanEck Vectors AMT-Free Long Municipal Index ETF

The VanEck Vectors AMT-Free Long Municipal Index ETF seeks to replicate as closely as possible, before fees and expenses, the price and yield performance of the Bloomberg Barclays AMT-Free Long Continuous Municipal Index. The Bloomberg Barclays AMT-Free Long Continuous Municipal Index is a market size weighted index comprised of publicly traded municipal bonds that cover the U.S. dollar denominated long-term tax-exempt bond market. To be included in the Bloomberg Barclays AMT-Free Long Continuous Municipal Index, bonds must be rated Baa3/BBB− or higher by at least two of the following ratings agencies if all three agencies rate the security: Moody's, S&P, and Fitch. If only one of the three agencies rates a security, the rating must be at least Baa3/BBB−. Constituent securities of the Bloomberg Barclays AMT-Free Long Continuous Municipal Index must have an outstanding par value of at least $7 million and be issued as part of a transaction of at least $75 million.

As of April 1, 2017, the Bloomberg Barclays AMT-Free Long Continuous Municipal Index included 7,657 component fixed income municipal bond securities from issuers in 50 different states or U.S. territories. The most heavily weighted security in the index represented less than 0.50% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 1.25% of the total weight of the index. Approximately 93.84% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 32.34% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $279,575,285,082, and the average dollar amount outstanding of issues in the index was approximately $36,512,379.

Normally, the VanEck Vectors AMT-Free Long Municipal Index ETF invests at least 80% of its total assets in fixed income securities that comprise the Bloomberg Barclays AMT-Free Long Continuous Municipal Index.

5. VanEck Vectors AMT-Free Short Municipal Index ETF

The VanEck Vectors AMT-Free Short Municipal Index ETF seeks to replicate as closely as possible, before fees and expenses, the price and yield performance of the Bloomberg Barclays AMT-Free Short Continuous Municipal Index. The Bloomberg Barclays AMT-Free Short Continuous Municipal Index is a market size weighted index comprised of publicly traded municipal bonds that cover the U.S. dollar denominated short-term tax-exempt bond market. To be included in the

Bloomberg Barclays AMT-Free Short Continuous Municipal Index, bonds must be rated Baa3/BBB− or higher by at least two of the following ratings agencies if all three agencies rate the security: Moody's, S&P, and Fitch. If only one of the three agencies rates a security, the rating must be at least Baa3/BBB−. Constituent securities of the Bloomberg Barclays AMT-Free Short Continuous Municipal Index must have an outstanding par value of at least $7 million and be issued as part of a transaction of at least $75 million.

As of April 1, 2017, the Bloomberg Barclays AMT-Free Short Continuous Municipal Index included 7,229 component fixed income municipal bond securities from issuers in 48 different states or U.S. territories. The most heavily weighted security in the index represented approximately 1% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2.25% of the total weight of the index. Approximately 94.4% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 13.60% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $152,020,140,995, and the average dollar amount outstanding of issues in the index was approximately $21,026,299.

Normally, the VanEck Vectors AMT-Free Short Municipal Index ETF invests at least 80% of its total assets in fixed income securities that comprise the Bloomberg Barclays AMT-Free Short Continuous Municipal Index.

6. VanEck Vectors High-Yield Municipal Index ETF

The VanEck Vectors High-Yield Municipal Index ETF seeks to replicate as closely as possible, before fees and expenses, the price and yield performance of the Bloomberg Barclays Municipal Custom High Yield Composite Index. The Bloomberg Barclays Municipal Custom High Yield Composite Index is a market size weighted index composed of publicly traded municipal bonds that cover the U.S. dollar denominated high yield long-term tax-exempt bond market. The Bloomberg Barclays Municipal Custom High Yield Composite Index is calculated using a market value weighting methodology, provided that the total allocation to issuers from each individual territory of the United States (including Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands) does not exceed 4%. The Bloomberg Barclays Municipal Custom High Yield Composite Index tracks the high yield municipal bond market with a 75% weight in non-investment grade municipal bonds and a targeted 25% weight in Baa/BBB rated investment grade municipal bonds.

As of April 1, 2017, the Bloomberg Barclays Municipal Custom High Yield Composite Index included 4,702 component fixed income municipal bond securities from issuers in 50 different states or U.S. territories. The most heavily weighted security in the index represented approximately 1.25% of the total weight of the index, and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 6% of the total weight of the index. Approximately 75.16% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 43.26% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $224,318,153,150, and the average dollar amount outstanding of issues in the index was approximately $47,706,966.

Normally, the VanEck Vectors High-Yield Municipal Index ETF invests at least 80% of its total assets in securities that comprise the Bloomberg Barclays Municipal Custom High Yield Composite Index.

7. VanEck Vectors Pre-Refunded Municipal Index ETF

The VanEck Vectors Pre-Refunded Municipal Index ETF seeks to replicate as closely as possible, before fees and expenses, the price and yield performance of the Bloomberg Barclays Municipal Pre-Refunded—Treasury-Escrowed Index. The Bloomberg Barclays Municipal Pre-Refunded—Treasury-Escrowed Index is a market size weighted index comprised of publicly traded municipal bonds that cover the U.S. dollar denominated tax-exempt bond market. The Bloomberg Barclays Municipal Pre-Refunded—Treasury-Escrowed Index is comprised of pre-refunded and/or escrowed-to-maturity municipal bonds. To be included in the Bloomberg Barclays Municipal Pre-Refunded—Treasury-Escrowed Index, bonds must have an explicit or implicit credit rating of AAA. Constituent securities of the Bloomberg Barclays Municipal Pre-Refunded—Treasury-Escrowed Index must have an outstanding par value of at least $7 million and be issued as part of a transaction of at least $75 million in market value.

As of April 1, 2017, the Bloomberg Barclays Municipal Pre-Refunded-Treasury-Escrowed Index included 3,691 component fixed income municipal bond securities from issuers in 50 different states or U.S. territories. The most heavily weighted security in the index represented approximately 0.50% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2.25% of the total weight of the index. Approximately 93.70% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 19.23% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $94,289,476,486, and the average dollar amount outstanding of issues in the index was approximately $25,545,780.

Normally, the VanEck Vectors Pre-Refunded Municipal Index ETF invests at least 80% of its total assets in securities that comprise the Bloomberg Barclays Municipal Pre-Refunded—Treasury-Escrowed Index.

8. PowerShares VRDO Tax-Free Weekly Portfolio

The PowerShares VRDO Tax-Free Weekly Portfolio seeks investment results that generally correspond (before fees and expenses) to the price and yield of the Bloomberg U.S. Municipal AMT-Free Weekly VRDO Index. The Bloomberg U.S. Municipal AMT-Free Weekly VRDO Index is comprised of municipal securities issued in the primary market as variable rate demand obligation (''VRDO'') bonds. Only VRDOs whose interest rates are reset weekly are included in the Bloomberg U.S. Municipal AMT-Free Weekly VRDO Index, and the Bloomberg U.S. Municipal AMT-Free Weekly VRDO Index excludes secondary or derivative VRDOs (tender option bonds). To be

included in the Bloomberg U.S. Municipal AMT-Free Weekly VRDO Index, constituents must be rated by at least one of the following statistical rating agencies at the following minimum ratings: Moody's as A−3 for long-term bonds or Prime-2 for short-term bonds; by S&P as A− for long-term bonds or A−2 for short-term bonds; and by Fitch as A− for long-term bonds or F−2 for short-term bonds.

As of April 1, 2017, the Bloomberg US Municipal AMT-Free Weekly VRDO Index included 1,494 component fixed income municipal bond securities from issuers in 49 different states or U.S. territories. The most heavily weighted security in the index represented approximately 0.75% of the total weight of the index and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2.75% of the total weight of the index. Approximately 44.76% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 34.88% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $68,489,564,000, and the average dollar amount outstanding of issues in the index was approximately $45,843,082.

Generally, the PowerShares VRDO Tax-Free Weekly Portfolio invests at least 80% of its total assets in VRDO bonds that are exempt from federal income tax with interest rates that reset weekly that comprise the Bloomberg U.S. Municipal AMT-Free Weekly VRDO Index.

9. SPDR Nuveen Bloomberg Barclays Short Term Municipal Bond ETF

The SPDR Nuveen Bloomberg Barclays Short Term Municipal Bond ETF seeks to provide investment results that, before fees and expenses, correspond generally to the price and yield performance of the Bloomberg Barclays Managed Money Municipal Short Term Index which tracks the short term tax exempt municipal bond market. The Bloomberg Barclays Managed Money Municipal Short Term Index is designed to track the publicly traded municipal bonds that cover the U.S. dollar denominated short term tax exempt bond market, including state and local general obligation bonds, revenue bonds, pre-refunded bonds, and insured bonds. All bonds in the Bloomberg Barclays Managed Money Municipal Short Term Index must be rated Aa3/AA− or higher by at least two of the following statistical ratings agencies: Moody's, S&P, or Fitch. If only one of the agencies rates the security, the rating must be at least Aa3/AA−. Each security in the Bloomberg Barclays Managed Money Municipal Short Term Index must have an outstanding par value of at least $7 million and be issued as part of a transaction of at least $75 million.

As of April 1, 2017, the Bloomberg Barclays Managed Money Municipal Short Term Index included 4,263 component fixed income municipal bond securities from issuers in 44 different states or U.S. territories. The most heavily weighted security in the index represented approximately 0.75% of the total weight of the index, and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2% of the total weight of the index. Approximately 94.54% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 10.82% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $85,187,709,681, and the average dollar amount outstanding of issues in the index was approximately $19,983,042.

Under normal market conditions, the SPDR Nuveen Bloomberg Barclays Short Term Municipal Bond ETF generally invests substantially all, but at least 80%, of its total assets in the securities comprising the Bloomberg Barclays Managed Money Municipal Short Term Index or in securities that the fund's sub-adviser determines have economic characteristics that are substantially identical to the economic characteristics of the securities that comprise the Bloomberg Barclays Managed Money Municipal Short Term Index. In addition, the SPDR Nuveen Bloomberg Barclays Short Term Municipal Bond ETF may invest in debt securities that are not included in the Bloomberg Barclays Managed Money Municipal Short Term Index, cash and cash equivalents or money market instruments, such as repurchase agreements and money market funds.

10. SPDR Nuveen Bloomberg Barclays Municipal Bond ETF

The Exchange states that, according to its prospectus, the SPDR Nuveen Bloomberg Barclays Municipal Bond ETF seeks to provide investment results that, before fees and expenses, correspond generally to the price and yield performance of the Bloomberg Barclays Municipal Managed Money Index which tracks the U.S. municipal bond market. The Bloomberg Barclays Municipal Managed Money Index is designed to track the U.S. long term tax-exempt bond market, including state and local general obligation bonds, revenue bonds, pre-refunded bonds, and insured bonds. The Bloomberg Barclays Municipal Managed Money Index is comprised of tax-exempt municipal securities issued by states, cities, counties, districts and their respective agencies. The Bloomberg Barclays Municipal Managed Money Index also includes municipal lease obligations, which are securities issued by state and local governments and authorities to finance the acquisition of equipment and facilities. All bonds in the Bloomberg Barclays Municipal Managed Money Index must be rated Aa3/AA− or higher by at least two of the following statistical ratings agencies: Moody's, S&P, and Fitch. If only one of the agencies rates the security, the rating must be at least Aa3/AA−. Each security in the Bloomberg Barclays Municipal Managed Money Index must have an outstanding par value of at least $7 million and be issued as part of a transaction of at least $75 million.

As of April 1, 2017, the Bloomberg Barclays Municipal Managed Money Index included 22,247 component fixed income municipal bond securities from issuers in 48 different states or U.S. territories. The most heavily weighted security in the index represented less than 0.25% of the total weight of the index, and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 0.50% of the total weight of the index. Approximately 95.05% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 13.35% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $496,240,108,998, and the average

dollar amount outstanding of issues in the index was approximately $22,305,934.

Under normal market conditions, the SPDR Nuveen Bloomberg Barclays Municipal Bond ETF generally invests substantially all, but at least 80%, of its total assets in the securities comprising the Bloomberg Barclays Municipal Managed Money Index or in securities that the fund's sub-adviser determines have economic characteristics that are substantially identical to the economic characteristics of the securities that comprise the Bloomberg Barclays Municipal Managed Money Index. In addition, the SPDR Nuveen Bloomberg Barclays Municipal Bond ETF may invest in debt securities that are not included in the Bloomberg Barclays Municipal Managed Money Index, cash and cash equivalents or money market instruments, such as repurchase agreements and money market funds.

11. iShares California Muni Bond ETF

The iShares California Muni Bond ETF seeks to track the investment results of the S&P California AMT-Free Municipal Bond Index, which measures the performance of the investment grade segment of the California municipal bond market. The S&P California AMT-Free Municipal Bond Index is a subset of the S&P National AMT-Free Municipal Bond Index and is comprised of municipal bonds issued in the State of California. The S&P California AMT-Free Municipal Bond Index primarily includes municipal bonds from issuers in California that are California state or local governments or agencies whose interest payments are exempt from U.S. federal and California state income taxes and the federal alternative minimum tax. Each bond in the S&P California AMT-Free Municipal Bond Index must have a rating of at least BBB− by S&P, Baa3 by Moody's, or BBB− by Fitch. Each bond in the S&P California AMT-Free Municipal Bond Index must be denominated in U.S. dollars, must be a constituent of an offering where the original offering amount was at least $100 million, and must have a minimum par amount of $25 million. To remain in the S&P California AMT-Free Municipal Bond Index, bonds must maintain a minimum par amount greater than or equal to $25 million as of the next rebalancing date.

As of April 1, 2017, the S&P California AMT-Free Municipal Bond Index included 2,115 component fixed income municipal bond securities from more than 150 distinct municipal bond issuers in the State of California. The most heavily weighted security in the index represented approximately 0.50% of the total weight of the index, and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 2.75% of the total weight of the index. Approximately 96.31% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 38.89% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $137,796,471,640, and the average dollar amount outstanding of issues in the index was approximately $65,151,996.

Generally, the iShares California Muni Bond ETF invests at least 90% of its assets in the component securities of the S&P California AMT-Free Municipal Bond Index and may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including shares of money market funds, as well as in securities not included in the S&P California AMT-Free Municipal Bond Index, but which the fund's investment advisor believes will help the fund track the S&P California AMT-Free Municipal Bond Index.

12. iShares New York Muni Bond ETF

The iShares New York Muni Bond ETF seeks to track the investment results of the S&P New York AMT-Free Municipal Bond Index, which measures the performance of the investment grade segment of the New York municipal bond market. The S&P New York AMT-Free Municipal Bond Index is a subset of the S&P National AMT-Free Municipal Bond Index and is comprised of municipal bonds issued in the State of New York. The S&P New York AMT-Free Municipal Bond Index primarily includes municipal bonds from issuers in New York that are New York state or local governments or agencies whose interest payments are exempt from U.S. federal and New York State personal income taxes and the federal alternative minimum tax. Each bond in the S&P New York AMT-Free Municipal Bond Index must have a rating of at least BBB− by S&P, Baa3 by Moody's, or BBB− by Fitch. Each bond in the S&P New York AMT-Free Municipal Bond Index must be denominated in U.S. dollars, must be a constituent of an offering where the original offering amount was at least $100 million, and must have a minimum par amount of $25 million. To remain in the S&P New York AMT-Free Municipal Bond Index, bonds must maintain a minimum par amount greater than or equal to $25 million as of the next rebalancing date.

As of April 1, 2017, the S&P New York AMT-Free Municipal Bond Index included 2,191 component fixed income municipal bond securities from more than 20 distinct municipal bond issuers in the State of New York. The most heavily weighted security in the index represented approximately 1.50% of the total weight of the index, and the aggregate weight of the top five most heavily weighted securities in the index represented approximately 4.25% of the total weight of the index. Approximately 98.63% of the weight of the index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities in the offering. Approximately 34.50% of the weight of the components in the index had a minimum original principal amount outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the index was approximately $124,381,556,872, and the average dollar amount outstanding of issues in the index was approximately $56,769,309.

Generally, the iShares New York Muni Bond ETF invests at least 90% of its assets in the component securities of the S&P New York AMT-Free Municipal Bond Index and may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including shares of money market funds, as well as in securities not included in the S&P New York AMT-Free Municipal Bond Index x, but which the fund's investment advisor believes will help the fund track the S&P New York AMT-Free Municipal Bond Index.

B. The Continued Listing and Trading of the Shares

The Exchange states that it is appropriate to continue to list and trade the Shares based on the characteristics of the indexes underlying the Municipal Bond Funds. According to the Exchange, each index underlying the Municipal Bond Funds satisfies all of the generic listing requirements for Investment Company Units based on a fixed income index, except for the minimum principal amount outstanding requirement of Commentary .02(a)(2) to Rule 5.2(j)(3). The Exchange asserts that a fundamental purpose behind the minimum principal amount outstanding requirement is to ensure that component

securities of an index are sufficiently liquid such that the potential for index manipulation is reduced.[11] The Exchange asserts that each index underlying the Municipal Bond Funds is a broad-based index of fixed income municipal bond securities that is not readily susceptible to manipulation.

With respect to the Multistate Municipal Bond Funds, the Exchange states: (1) Each underlying index is broad-based and currently includes, on average, more than 8,000 component securities; (2) currently each underlying index includes securities issued by municipal entities in more than 40 states or U.S. territories, and notes that the applicable generic listing criterion requires that an index contain securities issued by at least 13 non-affiliated issuers; [12] and (3) no single security currently represents more than approximately 1.5% of the weight of any underlying index, the aggregate weight of the five most heavily weighted securities in each index does not exceed approximately 6% of the weight of the index, and notes the applicable generic listing criterion permits a single component security to represent up to 30% of the weight of an index and the top five component securities to, in aggregate, represent up to 65% of the weight of an index.[13] The Exchange asserts that this index diversification is significant, and that the absence of constituent concentration in the underlying indexes provides a strong degree of protection against manipulation of the indexes.[14]

With respect to the Single-State Municipal Bond Funds, the Exchange states that each underlying index is well-diversified to protect against index manipulation. To support this, the Exchange states: (1) On average, the underlying indexes include more than 1,500 securities; (2) each underlying index includes securities from at least 20 distinct municipal bond issuers; and (3) the most heavily weighted security in any of the underlying indexes represents approximately 2% of the weight of the index, and the aggregate weight of the five most heavily weighted securities in any of the indexes represents approximately 6.25% of the total index weight.

The Exchange represents that: (1) On a continuous basis, each index underlying a Municipal Bond Fund will contain at least 500 component securities; (2) currently, each index satisfies all of the generic listing requirements under NYSE Arca Rule 5.2–E(j)(3) except for Commentary .02(a)(2); (3) the continued listing criteria under Rules 5.2(j)(3) (except for Commentary .02(a)(2)) and 5.5(g)(2) applicable to Investment Company Units will apply to the Shares; and (4) the issuer of each Municipal Bond Fund is required to comply with Rule 10A–3 [15] under the Act for the initial and continued listing of the Shares of each Municipal Bond Fund. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to Investment Company Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the underlying index and the applicable Intraday Indicative Value (''IIV''),[16] rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Bulletin to Equity Trading Permit Holders, as set forth in Exchange rules applicable to Investment Company Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Investment Company Units.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2017–56, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [17] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act,[18] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [19]

As noted above, the Exchange has submitted this proposed rule change because the Shares of the Municipal Bond Funds do not meet all of the generic listing requirements set forth in Commentary.02 to NYSE Arca Rule 5.2–E(j)(3). In the proposal, the Exchange describes certain characteristics of the underlying indexes as of April 1, 2017,[20] and asserts that those characteristics demonstrate that ''each . . . fund is based on a broad-based index that is not readily susceptible to manipulation.'' [21] Further, the Exchange contends that the ''significant diversification and the lack of concentration among constituent securities provides a strong degree of protection against index manipulation.'' [22] For purposes of continued listing of the Shares, however, apart from the representation that each index will have at least 500 component securities on an ongoing basis, the Exchange has not provided any criteria governing the extent to which the indexes may deviate from the initial set of characteristics that the Exchange relies on to determine the susceptibility of the indexes to manipulation. Accordingly, the Commission seeks commenters' views on whether the Exchange's statements and representations support a determination that the continued listing and trading of the Shares of the Municipal Bond Funds would be consistent with Section 6(b)(5) of the Act, which, among other things, requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

[11] *See* Amendment No. 1, *supra* note 4, at 16.

[12] *See* Commentary .02(a)(5) to NYSE Arca Rule 5.2–E(j)(3).

[13] *See* Commentary .02(a)(4) to NYSE Arca Rule 5.2–E(j)(3).

[14] *See* Amendment No. 1, *supra* note 4, at 17.

[15] 17 CFR 240.10A–3.

[16] An IIV for each Municipal Bond Fund will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session of 9:30 a.m. to 4:00 p.m., Eastern time. *See* Amendment No. 1, *supra* note 4, at 18, n.10. The Exchange states that currently it understands that several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association or other data feeds.

[17] 15 U.S.C. 78s(b)(2)(B).

[18] *Id.*

[19] 15 U.S.C. 78f(b)(5).

[20] *See supra* Section II.A.

[21] *See supra* note 3, 82 FR at 31652.

[22] *See supra* note 3, 82 FR at 31653.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[23]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 27, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 13, 2017. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,[24] in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–56 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–NYSEArca–2017–56. 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–NYSEArca–2017–56 and should be submitted on or before October 27, 2017. Rebuttal comments should be submitted by November 13, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21537 Filed 10–5–17; 8:45 am]

BILLING CODE 8011–01–P

[23] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[24] *See supra* note 3.

[25] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81798; File No. SR–NASDAQ–2017–097]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Connectivity Fees at Rule 7051

October 2, 2017.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7051, which sets forth the schedule of fees that the Exchange charges to its clients for connecting directly to the Exchange's data centers and/or receiving third party market data feeds and other non-Exchange services from the Exchange via circuits provided by third party telecommunications providers.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 1, 2017.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7051, which sets forth the schedule of fees that the Exchange charges to its clients for connecting directly to the Exchange's data centers and/or receiving third party market data feeds and other non-Exchange services from the Exchange via circuits provided by third party telecommunications providers.

Subscribers may use the connectivity provided under Rule 7051 to link them

to the Exchange for order entry and to receive proprietary data feeds, to receive public quote feeds from Securities Information Processors, and to connect to facilities of FINRA, such as the FINRA/Nasdaq TRF. The Exchange provides various direct connectivity options based on the capacity of the connection. A subscriber generally determines the capacity of the connection it needs based on the number of data services it wishes to receive and its estimated usage for trading and trade reporting purposes.

For direct connectivity to Nasdaq, Rule 7051(a) provides for 1 GB, 1 GB Ultra, and 10 GB Ultra hand-offs. The installation fee for all such connections is $1,500 and the monthly fee is $7,500 for 10 GB connections and $2,500 for both 1 GB and 1 GB Ultra hand-offs. The Exchange also charges a $925 fee to customers that choose to install a cable router in its data center and a monthly fee of $150 for customers that choose to install equipment in the Exchange's data center to support the connectivity.

For direct connectivity to third party services, Rule 7051(b) provides for 1GB Ultra and 10 GB Ultra hand-offs. The installation fee for both 10 GB Ultra and 1 GB Ultra direct connections is $1,500. Meanwhile, the monthly fee is $5,000 for 10 GB Ultra connections and $2,000 for 1 GB Ultra hand-offs. For 1 GB Ultra or 10 GB Ultra connections for UTP only, the installation fee and monthly fee is waived for the first two connections and thereafter the installation fee is $100 and the monthly fee is also $100. Again, the Exchange charges a $925 fee to customers that choose to install a cable router in its data center for purposes of receiving these third party services and a monthly fee of $150 for customers that choose to install equipment in the Exchange's data center to support the connectivity.

In order to reflect the changing nature of the Exchange's ecosystem and of the connection technologies it employs, the Exchange proposes to clarify Rule 7051 in several respects.

First, the Exchange proposes to list separately those fees it charges for certain connectivity that it presently includes under the general heading of Direct Connectivity, pursuant to Rule 7051(a). Specifically, the Exchange proposes to break out the fees it charges to clients that connect directly to the Exchange through a ''Point of Presence'' or ''POP'' from the fees it charges to clients that connect through a direct circuit connection. In contrast to a traditional direct circuit connection, in which a client uses an external telecommunications provider's circuit to connect directly to the Exchange's primary data center in Carteret, New Jersey, a ''POP'' connection is one in which a client directly connects to the Exchange at one of its satellite data centers located elsewhere. Each such POP, in turn, has a fully redundant connection to the Exchange's primary data center.

The Exchange proposes to list POP connectivity fees separately from traditional direct circuit connectivity fees because it wishes to highlight POP connectivity as a distinct connection option, particularly as it contemplates expanding the numbers and locations of its POPs in the future.

To effect the foregoing change, the Exchange proposes to add a new subsection (c) to Rule 7051 entitled ''Point of Presence Connectivity.'' Under proposed Rule 7051(c), the installation and monthly fees that the Exchange proposes to charge expressly for POP connectivity would not be new fees and they would differ only in name, and not in amount, from those fees that clients presently pay under Rule 7051(a) for the same connectivity. The new subsection would provide for clients to choose between 10 GB Ultra and 1 GB Ultra bandwidth hand-offs for connections to POPs. However, the proposed subsection (c) will not include charges for installing optional cable routers or cabinet space rentals insofar as clients may not install routers in or rent cabinet space directly from the Exchange at the POPs. Likewise, proposed subsection (c) will not include fees for regular 1 GB hand-offs insofar such hand-offs are not available for connections to POPs.

In addition to the above, the Exchange proposes to update the headings of Rule 7051(a) and (b) so that they more accurately reflect the nature of the services to which they apply. Because Rule 7051(a) and (b) list the fees that the Exchange charges customers for installing and maintaining direct telecommunications ''circuit'' connectivity with the Exchange, the Exchange proposes to change the heading of subsection (a) from ''Direct Connectivity to Nasdaq'' to ''Direct Circuit Connection to Nasdaq'' and the heading of subsection (b) from ''Direct Connectivity to Third Party Services'' to ''Direct Circuit Connection to Third Party Services.''

Lastly, the Exchange proposes to amend Rule 7051 to state that the connectivity provided under the Rule also applies to connectivity to the markets of The NASDAQ Stock Market LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Nasdaq ISE LLC, Nasdaq MRX LLC, and Nasdaq GEMX LLC. This purpose of this proposal is to specify that a client can use the connections it establishes and maintains under the Rule to connect, not only to the Exchange, but also to any or all of its sister Exchanges, and in doing so, it will be billed only once. Certain of the Exchange's other Rules already include similar language, including Rules 7030 and 7034. The Exchange wishes now to add such language to Rule 7051.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposal to separately list its fees for POP connectivity is reasonable as a means of clearly distinguishing POP connectivity from traditional direct circuit connectivity as set forth in Rule 7051(a). The proposal will not assess any new or different fees to customers that connect to the Exchange through POPs. Instead, the proposal will merely re-characterize the fees that clients presently pay under Rule 7051(a) as relating specifically to POP connectivity. The Exchange also believes that this proposal is an equitable allocation and is not unfairly discriminatory because it will apply all similarly situated clients that connect through POPs.

The Exchange believes that its proposal to modify the headings of subsections (a) and (b) of Rule 7051 is also reasonable because it clarifies that the fees in these subsections pertain specifically to connections to the Exchange that involve circuits provided by external telecommunications providers. Again, this proposal is an equitable allocation and is not unfairly discriminatory in that it will apply to all clients that use such direct circuits to connect to the Exchange.

Lastly, the Exchange believes that its proposal is reasonable and nondiscriminatory to clarify that each of the connection options and fees set forth in Rule 7051 generally provide for connectivity to The NASDAQ Stock Market LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Nasdaq ISE LLC, Nasdaq MRX LLC, and Nasdaq GEMX LLC. The Exchange does not restrict its clients from utilizing their direct

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5).

connections to it to also access its sister exchanges, and it does not charge its clients more than once to do so. Although certain of the Exchange's other connectivity Rules already make these points clear (*e.g.,* Rules 7030 and 7034), Rule 7051 does not do so. The Exchange therefore believes its proposal to clarify Rule 7051 is warranted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal merely clarifies the Exchange's existing services and associated fees and the Exchange does not anticipate that such clarifications will have any impact on competition whatsoever.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[5]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–097. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–097, and should be submitted on or before October 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–21541 Filed 10–5–17; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 200.30–3(a)(12).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36145]

Scrap Metal Services Terminal Railroad Company (Indiana), LLC—Lease and Operation Exemption—Rail Line of Scrap Metal Services, LLC

Scrap Metal Services Terminal Railroad Company (Indiana), LLC (SMSRRIN), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease from Scrap Metal Services, LLC (SMS), and to operate,[1] approximately 2,115 linear feet (0.40 mile) of railroad right-of-way and trackage located at the East Chicago Transload Facility at the intersection of East 151st Street and the Indiana Harbor Belt Railroad right-of-way in East Chicago, Ind. (the East Chicago Transload Facility trackage), pursuant to an agreement. SMS Realty (East Chicago), LLC, owns the East Chicago Transload Facility trackage, which is leased to SMS.

According to SMSRRIN, there are no mileposts associated with the East Chicago Transload Facility trackage. SMSRRIN states that the trackage is used in conjunction with interchanging to and from Indiana Harbor Belt Railroad carloads of scrap metal for transloading into trucks for delivery to metal working manufacturers.

SMSRRIN asserts that, because the trackage in question will constitute the entire line of railroad of SMSRRIN, this trackage is a line of railroad under 49 U.S.C. 10901, rather than spur, switching, or side tracks excepted from Board acquisition and operation authority by virtue of 49 U.S.C. 10906.[2]

Although SMSRRIN states in its verified notice that the operations were proposed to be consummated on or about September 15, 2017, this transaction may not be consummated until October 21, 2017 (30 days after the verified notice was filed).

SMSRRIN certifies that its projected annual revenues as a result of this transaction do not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million. SMSRRIN also certifies that there are no provisions or agreements that may limit future interchange commitments.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than October 13, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36145, must be filed with the Surface Transportation Board, 395 E Street SW.,

[1] A draft copy of the operating agreement was submitted with the notice of exemption.

[2] *See Effingham R.R.—Pet. for Declaratory Order—Constr. at Effingham, Ill.,* 2 S.T.B. 606, 609–10 (STB served Sept. 12, 1997), *aff'd sub nom. United Transp. Union-Illinois Legislative Bd.* v. *STB,* 183 F.3d 606 (7th Cir. 1999).

Washington, DC 20423–0001. In addition, a copy of each pleading must be served on SMSRRIN's representative, David C. Dillon, Dillon & Nash, Ltd., 3100 Dundee Road, Suite 508, Northbrook, IL 60062.

According to SMSRRIN, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV.*''

Decided: October 2, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2017–21531 Filed 10–5–17; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2017–0018]

Request for Comments Concerning an Environmental Review of the Proposed Renegotiation of the North American Free Trade Agreement; Correction

AGENCY: Office of the United States Trade Representative

ACTION: Notice; correction.

SUMMARY: The Trade Policy Staff Committee (TPSC) published a document in the **Federal Register** of September 26, 2017, requesting comments that will assist the Office of the United States Trade Representative (USTR) in an environmental review relating to the renegotiation of the North American Free Trade Agreement (NAFTA), a free trade agreement between the United States, Canada, and Mexico. The document contained an incorrect docket number. The correct docket number is Docket Number USTR–2017–0018.

FOR FURTHER INFORMATION CONTACT: Direct questions about submission of comments to Yvonne Jamison at (202) 395–3475. Direct substantive questions to Sarah Stewart at (202) 395–7320.

Correction: In the **Federal Register** of September 26, 2017, in FR Doc. 2017–20526, 82 FR 44868–69, correct the docket number wherever it appears to read Docket Number USTR–2017–0018.

Edward Gresser,

Chair, Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2017–21772 Filed 10–5–17; 8:45 am]

BILLING CODE 3290–F8–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2017–78]

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 Federal Aviation 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 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 16, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0891 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,* 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,* phone (202) 267–4713.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington.

Victor Wicklund,

Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2017–0891.
Petitioner: Boeing.
Section of 14 CFR Affected: § 25.903(d)(1).

Description of Relief Sought: Boeing is requesting relief from the requirements of 14 CFR 25.903(d)(1), amendment 25–100 for a limited number of 767–2C airplanes. The regulation requires that hazards due to uncontained engine failures be minimized. There is a portion of the wiring for the engine thrust control system where the redundant channels are not sufficiently separated for 1/3-disc fragments within the uncontained engine failure hazard zone. The relief sought is limited to those 767–2C airplanes completed prior to the production incorporation of the design change that sufficiently separates engine thrust control wiring.

[FR Doc. 2017–21543 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in Utah

AGENCY: Utah Department of Transportation (UDOT), Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by UDOT on behalf of FHWA, and Federal agencies.

SUMMARY: This notice announces certain actions taken by UDOT on behalf of FHWA and other Federal agencies. The actions relate to a proposed highway project located on Interstate 80 (I–80),

from approximate milepost (MP) 142.1 to MP 136, in the Counties of Summit and Salt Lake, State of Utah. Those actions grant licenses, permits and approvals for the project.

DATES: By this notice, the FHWA, on behalf of UDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 5, 2018. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For UDOT*:* Brandon Weston, Director of Environmental Services, UDOT Environmental Services, P.O. Box 148380, Salt Lake City, UT 84114; telephone: (801) 965–4603; email: *brandonweston@utah.gov.* UDOT's normal business hours are 8:00 a.m. to 5:00 p.m. (Mountain Standard Time), Monday through Friday, except State and Federal holidays.

SUPPLEMENTARY INFORMATION: Effective July 1, 2008 and renewed on July 1, 2011, June 30, 2014, and June 23, 2017, FHWA assigned, and UDOT assumed, all environmental responsibilities for this project pursuant to 23 U.S.C. 326 Categorical Exclusion Assignment Memorandum of Understanding. Notice is hereby given that UDOT has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the I–80; Parleys Summit to Jeremy Ranch Westbound Truck Lane project in the State of Utah. This project proposes to improve I–80 from approximate MP 136 to approximate MP 142.1 to address safety issues associated with semi-truck congestion, reduce the potential for wildlife/motorists incidents, and address deficient pavement conditions located in the counties of Salt Lake and Summit, Utah. The project consists of the following elements: (1) Add an additional westbound truck climbing lane from approximate MP 138.3 to 141.8; (2) constructing a wildlife bridge over I–80 at approximate MP 139 and installing exclusionary wildlife fencing and escape ramps through the project; and (3) pavement rehabilitation along all east- and westbound lanes throughout the corridor. These improvements were identified in the Categorical Exclusion for the project. The actions by UDOT and the Federal agencies, and the laws under which such actions were taken, are described in the Categorical Exclusion (CE) for the project (I–80; Parleys Summit to Jeremy Ranch Westbound Truck Lane in Salt Lake and Summit Counties, Utah, Project No. F–I80–4(151)139), approved on June 26, 2017, and in other documents in the UDOT project records. The CE and other project records are available by contacting UDOT at the address provided above.

This notice applies to the CE, the Section 4(f) Determination, the NHPA Section 106 Review, the ESA Section 7 Effects Determination, the Noise Assessment, and all other UDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the following laws (including their implementing regulations):

1. *General*: National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4370; Federal-Aid Highway Act, 23 U.S.C. 109.

2. *Air*: Clean Air Act, 42 U.S.C. 7401–7671q.

3. *Land*: Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303; 23 U.S.C. 138; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

4. *Wildlife*: Endangered Species Act, 16 U.S.C. 1531–1544 and Section 1536; Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d; Migratory Bird Treaty Act, 16 U.S.C. 703–712.

5. *Water*: Section 404 of the Clean Water Act, 33 U.S.C. 1344; E.O. 11990, Protection of Wetlands.

6. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f; Archeological Resources Protection Act of 1977, 16 U.S.C. 470aa–470mm; Archeological and Historic Preservation Act, 16 U.S.C. 469–469c.

7. *Noise*: Federal-Aid Highway Act of 1970, Public Law 91–605, 84 Stat. 1713.

8. *Executive Orders*: E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 12898, Federal Actions to Address Environmental Justice and Low-Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Issued on: September 28, 2017.

Ivan Marrero,

Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2017–21562 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the West Davis Corridor Project, Davis and Weber County, Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA. The actions relate to a proposed highway project, West Davis Corridor (Project S–0067(14)0) starting in Centerville, Utah and ending in West Point, Utah in Davis County, Utah. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 5, 2018. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA contact Paul Ziman, Area Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, Telephone: (801) 955–3525, Email: *Paul.Ziman@dot.gov.* The Utah Department of Transportation (UDOT) contact is Randy Jefferies, Project Manager, 166 Southwell Street Ogden, UT 84404, Telephone: (801) 620–1690, Email: *rjefferies@utah.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency action subject to 23 U.S.C. 139(l)(1) by issuing an approval for the following highway project in the State of Utah. The primary purposes of the West Davis Corridor project are to reduce delay and congestion in western Davis and Weber Counties. As proposed the project is about 19 miles and would be a four-lane divided highway with a 250-foot right-of-way width from I–15 in Farmington to Antelope Drive in Davis County. From Antelope Drive to 1800 North in West Point, the B Alternatives would be a 146-foot-wide, limited-access, two-lane highway. The action of approval by FHWA and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on June 23, 2017, in the FHWA Record of Decision (ROD) issued

on September 29, 2017, and in other documents in the project records. The FEIS and ROD and other project records are available by contacting FHWA and UDOT at the addresses provided above. The FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.udot.utah.gov/westdavis/,* or obtained from any contact listed above.

This notice applies to all Federal agency decisions that are final as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671q].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303; 23 U.S.C. 138].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361–1423h]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470f]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470aa–470mm]; Archeological and Historic Preservation Act [16 U.S.C. 469–469c]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26)]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)]

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139*(l)*(1).

Issued on: October 2, 2017.

Ivan Marrero,

Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2017–21561 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 4 California projects involving the acquisition of vehicles under the Congestion Mitigation and Air Quality Improvement program on the condition that they be assembled in the U.S., on the basis that there are no domestic manufacturers that produce the vehicles identified in this notice in such a way that all their steel and iron elements are manufactured domestically.

DATES: The effective date of the waiver is October 10, 2017.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, 202–366–1562, or via email at *Gerald.Yakowenko@dot.gov*. For legal questions, please contact Mr. Jomar Maldonado, FHWA Office of the Chief Counsel, 202–366–1373, or via email at *Jomar.Maldonado@dot.gov*. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at *http://www.archives.gov* and the Government Publishing Office's database.

Background

This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 4 California projects involving the acquisition of vehicles under the Congestion Mitigation and Air Quality Improvement (CMAQ) program. The waiver would apply to approximately 29 vehicle acquisitions on the condition that they be assembled in the United States. These involve 17 compressed natural gas solid waste trucks for the City of Visalia (CMLNI–5044(117)), 1 propane powered school bus for the City of Visalia (CMLNI–5044(119)), 6 diesel refuse trucks for the City of Tulare (CMLNI–5072(061)), and 5 compressed natural gas refuse trucks for the City of Porterville (CMLNI–5122(086)).

Title 23, Code of Federal Regulations (CFR), section 635.410 requires that steel or iron materials (including protective coatings) that will be permanently incorporated in a Federal-aid project must be domestically manufactured. For FHWA, this means that all the processes that modified the chemical content, physical shape or size, or final finish of the material (from initial melting and mixing, continuing through the bending and coating) occurred in the United States. The statute and regulations create a process for granting waivers from the Buy America requirements when its application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. In 1983, FHWA determined that it was both in the public interest and consistent with the legislative intent to waive Buy America for manufactured products other than steel manufactured products. However, FHWA's national waiver for manufactured products does not apply to the requests in this notice because they involve predominately steel and iron manufactured products. The FHWA's Buy America requirements do not have special provisions for applying Buy America to ''rolling stock'' such as vehicles or vehicle components (see 49 U.S.C. 5323(j)(2)(C), 49 CFR 661.11, and 49 U.S.C. 24405(a)(2)(C) for examples of Buy America rolling stock provisions for other DOT agencies).

Based on all the information available to the agency, FHWA concludes that there are no manufacturers that produce the vehicles identified in this notice in such a way that all their steel and iron elements are manufactured domestically. The FHWA's Buy America

requirements were tailored to the types of products that are typically used in highway construction, which generally meet the requirement that steel and iron materials be manufactured domestically. In today's global industry, vehicles are assembled with iron and steel components that are manufactured all over the world. The FHWA is not aware of any domestically produced vehicle on the market that meets FHWA's Buy America requirement to have all its iron and steel be manufactured exclusively in the United States. For example, the Chevrolet Volt, which was identified by many commenters in a November 21, 2011, **Federal Register** Notice (76 FR 72027) as a car that is made in the United States, is comprised of only 45 percent of United States and Canadian content according to the National Highway Traffic Safety Administration's Part 583 American Automobile Labeling Act Report Web page at *http://www.nhtsa.gov/Laws+&+Regulations/Part+583+American+Automobile+Labeling+Act+(AALA)+Reports.* Moreover, there is no indication of how much of this 45 percent content is domestically manufactured (from initial melting and mixing) iron and steel content.

Consistent with the Consolidated Appropriations Act of 2017 (Pub. L. 115–31), FHWA published two notices seeking comments whether a waiver is appropriate on its Web site, *https://www.fhwa.dot.gov/construction/contracts/cmaq170321.cfm* and *https://www.fhwa.dot.gov/construction/contracts/cmaq170725.cfm.* The FHWA received no comments in response to the publication. Based on FHWA's conclusion that there are no domestic manufacturers that can produce the vehicles identified in this notice in such a way that all their steel and iron materials are manufactured domestically, FHWA finds that a waiver of FHWA's Buy America requirements is appropriate under the non-availability criteria (23 U.S.C. 313(b)(2) and 23 CFR 635.410(c)(2)(ii)). However, FHWA believes that it is consistent with the Buy America requirements to impose the condition that the vehicles and the vehicle components be assembled in the United States. Requiring final assembly to be performed in the United States is consistent with past guidance to FHWA Division Offices on manufactured products (see Memorandum on Buy America Policy Response, Dec. 22, 1997, *http://www.fhwa.dot.gov/programadmin/contracts/122297.cfm*). A waiver of the Buy America requirement without any regard to where the vehicle is assembled would diminish the purpose of the Buy America requirement. Moreover, in today's economic environment, the Buy America requirement is especially significant in that it will ensure that Federal-aid funds are used to support and create domestic jobs. This approach is similar to the conditional waivers previously given for various vehicle projects. Thus, so long as the final assembly of the 29 vehicles occurs in the United States, applicants to this waiver request may proceed to purchase these vehicles consistent with the Buy America requirement.

In accordance with the provisions of section 117 of the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Technical Corrections Act of 2008'' (Pub. L. 110–244), FHWA is providing this notice of its finding that a non-availability waiver of Buy America requirements is appropriate on the condition that the vehicles identified in the notice are assembled domestically. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410

Issued on: October 2, 2017.

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2017–21567 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0085]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated August 22, 2017, Siemens Mobility Division Rolling Stock (Siemens) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from the requirements of 49 CFR 238.103 (Fire safety). FRA assigned the petition docket number FRA–2017–0085.

Section 238.103 of Title 49 of the CFR requires materials used in the construction of passenger cars to meet the test methods and performance criteria for the flammability and smoke emission characteristics of Appendix B to part 238. Appendix B requires all thermal and acoustic insulation material used in the construction of passenger rail vehicles to be tested in accordance with American Society for Testing and Materials (ASTM) E 162.98 with a radiant panel index of Is ≤ 25, and ASTM E 662–01 with a specific optical density Ds (4.0) ≤ 100.

In constructing twenty passenger coaches for use in phase 1 of the Brightline/All Aboard Florida (AAF) passenger service between Miami and West Palm Beach, Siemens used a ''K-Flex Eco'' material that has been tested with the results of Is = 202 and Ds (4.0) = 131. Siemens is requesting a waiver from Appendix B as applied to these two requirements, asserting that the ''fire risk . . . is negligible and an equivalent level of safety is maintained'' considering the end use configuration of the material and the small amount of the material used'' Siemens further indicates it intends the waiver to provide sufficient information to demonstrate an equivalent level of safety in order to prevent the replacement of the K-Flex Eco insulation material in the 20 coaches. Siemens also notes that granting the requested relief would have a considerable positive impact on the project schedule and associated costs.

In support of its petition, Siemens attached two documents: (1) AAF Coach SFT Water Pipe Insulation Discussion V5 (A 13-page presentation showing pipe insulation material, its usage on AAF coaches, for drain and fresh water pipes, as well as locations of the usage); and (2) a 53-page document titled, ''Fire Safety Analysis; Use of K-Flex Eco Insulation in All Aboard Florida Coaches.'' (SII–ENA–215 Rev. B). This document provided the analysis supporting Siemens' safety equivalency claim.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the

comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 6, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2017–21514 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0084]

Petition for Waiver of Compliance

Under part 211 of title 49 of the Code of Federal Regulations (CFR), this provides the public notice that on August 21, 2017, the Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations in 49 CFR part 214. FRA assigned the petition docket number FRA–2017–0084.

NS requests a waiver of compliance from § 214.336(c) as it pertains to procedures for adjacent controlled track movements at 25 miles per hour (mph) or less. NS indicates this request is specific to a unique working group, the R–3 Dual Rail Gang (R–3 Gang). This group is a system-level production gang comprised of 78 employees and 40 roadway maintenance machines with the capability to remove both rails while simultaneously installing both new rails. NS states no other railroad has a work group that operates in this manner to replace both rails; the relief requested in the waiver would apply only to this specific work group.

NS is seeking a waiver from using the gauge position of the rail as the point for the plane that is not to be broken on the occupied track. Instead, NS seeks to use the removed rails of the occupied track as an envelope for on-ground work performed exclusively between these rails for the employees working in the R–3 Gang. NS asserts the work can be performed safely within the context of the R–3 Gang's work. As described by NS in its petition, during dual rail replacement, both rails are simultaneously removed from the track structure and positioned on the ballast against the outside of the crossties on the occupied track. In this position, the removed rail is nearly 16.75 inches closer to the adjacent controlled track than its normal gage position on the crosstie. Once the rails are removed from their normal position on the crosstie, an adzing machine is used to remove any tie cutting from the crosstie. At this point in the process, there is not a clearly defined outside limit with respect to ''the on-ground work performed exclusively between the rails.'' NS states that the removed rail lying on the ballast against the end of the crosstie provides a clear line of demarcation that is easily identifiable to its employees.

NS is also seeking a waiver from the requirement that on-ground work be performed exclusively between the rails (*i.e.,* not breaking the plane of the rails) of the occupied track. Based on this request, NS seeks a waiver from compliance to allow up to four on-ground R–3 Gang employees (when working with one adjacent controlled track) and up to eight on-ground R–3 Gang employees (when working with two adjacent controlled tracks) to break the plane of the outside rail to perform minor work. NS indicates the employees would be limited in their duties for breaking the plane of the outside rail to only move tie plates with non-powered hand tools from the ballast to its positon on top of the crossties. This minor work could be completed with the employees' center of gravity positioned within the newly defined outside rails.

A copy of the petition, as well as any other written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 20, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://*

www.transportation.gov/privacy. See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2017–21513 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0083]

Petition for Approval of Informational Filing

Under part 211 of title 49, Code of Federal Regulations (CFR), this document amends prior public notice that on August 30, 2017, the Yadkin Valley Railroad (YVRR) petitioned the Federal Railroad Administration (FRA) for approval of an Informational Filing (IF) pursuant to 49 CFR 236.913(j).

The YVRR submitted an IF requesting FRA approval to conduct field testing of a Train Detection System supplied by Next Generation Rail Technologies S.L. (NGRT) at Bethania Road highway-rail crossing in Rural Hall, North Carolina. After installation of the system, the proposed period of data collection will be approximately four months. YVRR asserts that its IF addresses all requirements of 49 CFR 236.913(j)(1), and that the Train Detection System will be operating in shadow mode only to collect data, and will not interfere, impact, or communicate with the current signaling system.

FRA assigned the petition Docket Number FRA–2017–0083, and published notice of the petition in the **Federal Register** on September 18, 2017. 82 FR 43655.

This document provides additional information and corrections to the notice published September 18, 2017, regarding this docket. The September 18 notice included an inaccurate description of the filing, and omitted language providing an opportunity and instructions for public comment.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 20, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2017–21512 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2001–10948]

Petition for Waiver of Compliance

Under part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that on September 11, 2017, Central Montana Rail, Inc. (CMR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the hours of service laws contained at Title 49 United States Code Section 21103(a) under authority of section 21102(b). FRA assigned the petition docket number FRA–2001–10948.

CMR requested an extension of its existing waiver of relief from the provisions of 49 U.S.C. 21103(a), which prohibits a train employee from remaining or going on duty for a period in excess of 12 consecutive hours. 49 U.S.C. 21102(b) allows railroads with 15 or fewer employees to be exempted from the restriction outlined at 49 U.S.C. 21103(a)(2), but the exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period. In support of its request, CMR explained that the allowance for train crews to accumulate up to 16 hours of time on duty has not impacted safety negatively, and is only used occasionally, to address unusual circumstances such as weather, traffic peaks, and employee illness. CMR states that its operation continues on approximately the same scale as when the initial waiver was granted, with seven regular full-time employees. A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the

appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 20, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2017–21511 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–1999–5102]

Petition for Waiver of Compliance

Under part 211 of Title 49 of the Code of Federal Regulations (CFR), this provides the public notice that on August 25, 2017, the Southeastern Pennsylvania Transportation Authority (SEPTA) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 213, Track Safety Standards. The docket number associated with this petition is FRA–1999–5102.

SEPTA seeks to extend its existing waiver from 49 CFR 213.233(c), relating to the frequency of the required visual track inspections for FRA Class 3 and 4 track carrying passenger traffic. FRA issued the initial waiver on July 24, 2000, and FRA extended the waiver on August 4, 2003, February 28, 2008, and April 25, 2013 for three 5-year periods.

SEPTA requests an extension of its existing waiver to conduct fewer visual track inspections than required by § 213.233(c), specifically for tracks constructed with continuous welded rail that carry passenger traffic. SEPTA proposes to continue conducting one visual track inspection per week, instead of the two inspections per week that are required, and to supplement its visual inspections with the operation of an automated track geometry measuring vehicle over the affected main tracks and sidings four times per year. SEPTA has owned and operated such a measuring vehicle since 1992.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 20, 2017 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2017–21510 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0049]

North County Transit District's Request for Positive Train Control Safety Plan Approval and System Certification

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public notice that North County Transit District (NCTD) submitted to FRA its Positive Train Control Safety Plan (PTCSP) Volume I–Main Body (Version 2.0) and Volume II–Appendices (Version 1.0), both dated September 1, 2017. NCTD asks FRA to approve its PTCSP and issue a Positive Train Control (PTC) System Certification for NCTD's Interoperable Electronic Train Management System (I-ETMS).

DATES: FRA will consider communications received by November 6, 2017 before taking final action on the PTCSP. FRA may consider comments received after that date if practicable.

ADDRESSES: All communications concerning this proceeding should identify Docket Number 2010–0049 and may be submitted by any of the following methods:

- *Web site*: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax*: 202–493–2251.
- *Mail*: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery*: 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Hartong, Senior Scientific Technical Advisor, at (202) 493–1332 or *Mark.Hartong@dot.gov;* or Mr. David Blackmore, Staff Director, Positive Train Control Division, at (312) 835–3903 or *David.Blackmore@dot.gov.*

SUPPLEMENTARY INFORMATION: In its PTCSP, NCTD asserts that the I-ETMS system it is implementing is designed as a vital overlay PTC system as defined in 49 CFR 236.1015(e)(2). The PTCSP describes NCTD's I-ETMS implementation and the associated I-ETMS safety processes, safety analyses, and test, validation, and verification processes used during the development of I–ETMS. The PTCSP also contains NCTD's operational and support requirements and procedures.

NCTD's PTCSP and the accompanying request for approval and system certification are available for review online at *www.regulations.gov* (Docket Number FRA–2010–0049) and in person at DOT's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to comment on the PTCSP by submitting written comments or data. During its review of the PTCSP, FRA will consider any comments or data submitted. However, FRA may elect not to respond to any particular comment and, under 49 CFR 236.1009(d)(3), FRA maintains the authority to approve or disapprove the PTCSP at its sole discretion. FRA does not anticipate scheduling a public hearing regarding NCTD's PTCSP because the circumstances do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, the party should notify FRA in writing before the end of the comment period and specify the basis for his or her request.

Privacy Act Notice

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2017–21618 Filed 10–5–17; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities: Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995, the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have approved the publication for public comment of the proposed Annual Dodd-Frank Act Company-Run Stress Test Report for Depository Institutions and Holding Companies with $10–$50 Billion in Total Consolidated Assets (FFIEC 016). This proposed report would combine the agencies' three separate, yet identical, stress test report forms (as described in the **SUPPLEMENTARY INFORMATION**), which are currently approved collections of information, into a single new FFIEC report. As part of their proposed adoption of the new FFIEC 016 report, the agencies also are proposing to implement a limited number of revisions that would align the report with recent burden-reducing changes to the FFIEC 031 and FFIEC 041 Consolidated Reports of Condition and Income and the Board's FR Y–9C Consolidated Financial Statements for Holding Companies. In addition, the agencies are proposing to have institutions provide their Legal Entity Identifier (LEI) on the report form, if they already have one. The proposed FFIEC 016 reporting requirements reflect the company-run stress testing requirements promulgated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (as reflected in the agencies' current information collections).

The Board, in connection with this proposal and conditioned on the final adoption of the FFIEC 016, is proposing to replace the FR Y–16 (Annual Company-Run Stress Test Report For State Member Banks, Bank Holding Companies, and Savings and Loan Holding Companies with Total Consolidated Assets Greater Than $10 Billion and Less Than $50 Billion), which it currently uses to collect the annual company-run stress test results. Also in connection with the final adoption of the FFIEC 016, the OCC and the FDIC are proposing to replace the OCC's DFAST 10–50B (Annual Company-Run Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $10 Billion to $50 Billion under the Dodd-Frank Wall Street Reform and Consumer Protection Act), and the FDIC's DFAST 10–50 (Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $10 Billion to $50 Billion under the Dodd-Frank Wall Street Reform and Consumer Protection Act), respectively, with the FFIEC 016.

The respondents for the proposed FFIEC 016 are institutions with average total consolidated assets of at least $10 billion, but less than $50 billion. The proposed FFIEC 016 would take effect for the December 31, 2017, as-of date of the stress test report. The submission deadline for the report would be the following July 31.

At the end of the comment period for this notice, the comments and recommendations received will be reviewed to determine whether the FFIEC and the agencies should modify the proposal for the FFIEC 016 report

form before giving final approval. As required by the PRA, the agencies will then publish a second **Federal Register** notice for a 30-day comment period and submit the FFIEC 016 information collection to OMB for review and approval.

DATES: Comments must be submitted on or before December 5, 2017.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Because paper mail in the Washington, DC, area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible, to *prainfo@occ.treas.gov.* Alternately, comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: ''1557–0311 (FFIEC 016),'' 400 7th Street SW., Suite 3E–218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326.

You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: You may submit comments, which should refer to ''FFIEC 016,'' by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include reporting form 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.

FDIC: You may submit comments, which should refer to ''FFIEC 016,'' by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: comments@FDIC.gov.* Include ''FFIEC 016'' in the subject line of the message.
- *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9:00 a.m. and 5:00 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed FFIEC report discussed in this notice, please contact any of the agency staff whose names appear below. In addition, a copy of the proposed FFIEC 016 reporting form is available on the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Counsel, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Room MB–3007, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies propose to implement the FFIEC 016 report form to replace the following report forms, which are approved collections of information: Board's FR Y–16, Annual Company-Run Stress Test Report For State Member Banks, Bank Holding Companies, and Savings and Loan Holding Companies with Total Consolidated Assets Greater Than $10 Billion and Less Than $50 Billion (OMB Control No. 7100–0356); FDIC's DFAST 10–50, Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $10 Billion to $50 Billion under the Dodd-Frank Wall Street Reform and Consumer Protection Act (OMB Control No. 3064–0187); and OCC's DFAST 10–50B, Annual Company-Run Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $10 Billion to $50 Billion under the Dodd-Frank Wall Street Reform and Consumer Protection Act (OMB Control No. 1557–0311). These existing report forms collect identical information; however, the respondent institutions for each form vary based on each agency's supervisory jurisdiction.

Report Title: Annual Dodd-Frank Act Company-Run Stress Test Report for Depository Institutions and Holding Companies with $10–$50 Billion in Total Consolidated Assets.

Form Number: FFIEC 016.

Frequency of Response: Annually.

Affected Public: Business or other for-profit.

OCC

OMB Control No.: 1557–0311.

Estimated Number of Respondents:

Initial Stress Test: 1 National bank or federal savings association.

Ongoing Annual Stress Test: 36 National banks and federal savings associations.

Estimated Time per Response:

Initial Stress Test: 2,000 Burden hours per response.

Ongoing Annual Stress Test: 469 Burden hours per response.

Estimated Total Annual Burden:

Initial Stress Test: 2,000 Burden hours to file.

Ongoing Annual Stress Test: 16,884 Burden hours to file.

Total: 18,884 Burden hours to file.

Board

OMB Control No.: 7100–0356.

Estimated Number of Respondents:

Initial Stress Test: 9 State member banks, bank holding companies, and savings and loan holding companies.

Ongoing Annual Stress Test: 70 State member banks, bank holding companies, and savings and loan holding companies.

Estimated Time per Response:

Initial Stress Test: 2,000 Burden hours per response.

Ongoing Annual Stress Test: 469 Burden hours per response.

Estimated Total Annual Burden:

Initial Stress Test: 18,000 Burden hours to file.

Ongoing Annual Stress Test: 32,830 Burden hours to file.

Total: 50,830 Burden hours to file.

FDIC

OMB Control No.: 3064–0187.

Estimated Number of Respondents:

Initial Stress Test: 2 Insured state nonmember banks and savings associations.

Ongoing Annual Stress Test: 22 Insured state nonmember banks and state savings associations.

Estimated Time per Response:

Initial Stress Test: 2,000 Burden hours per response.

Ongoing Annual Stress Test: 469 Burden hours per response.

Estimated Total Annual Burden:

Initial Stress Test: 4,000 Burden hours to file.

Ongoing Annual Stress Test: 10,318 Burden hours to file.

Total: 14,318 Burden hours to file.

Type of Review:

OCC and FDIC: Revision and extension of currently approved collections.

Board: Proposal for a new collection of information and discontinuation of a currently approved collection.

General Description of Reports

The proposed FFIEC 016 information collection will be mandatory for institutions with average total consolidated assets of at least $10 billion, but less than $50 billion. The FFIEC 016 implements the reporting of the annual company-run stress testing required of such institutions under section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (Dodd-Frank Act), and each agency's implementing regulation.[1] All data reported in the proposed FFIEC 016 would be given confidential treatment under 5 U.S.C. 552(b)(8).

Abstract

The FFIEC 016 report would be submitted by institutions supervised by the agencies with average total consolidated assets of at least $10 billion, but less than $50 billion, to report their company-run stress test results. These reports collect quantitative projections of balance sheet assets and liabilities, income, losses, and capital across three scenarios (baseline, adverse, and severely adverse) and qualitative information on methodologies used to develop these internal projections.

Data received in the agencies' $10–$50 billion annual Dodd-Frank Act company-run stress test reports are used in connection with supervision and regulation of these institutions to form supervisory assessments of the quality of a company's stress-testing process and, overall, as part of the broader assessment of a company's capital adequacy and risk management process. Data collected in these reports provide the agencies with one of many tools available to examiners to assist in the analysis and assessment of a company's capital position and planning process.

Current Actions

I. Discussion of Proposed FFIEC Report Form

Each agency has issued rules applicable to the banking organizations it supervises with total consolidated assets of at least $10 billion, but less than $50 billion, that implement the company-run stress testing requirement promulgated by section 165(i)(2) of the Dodd-Frank Act.[2] Under the agencies' respective rules, institutions that meet this asset threshold are required to conduct, and report the results of, an annual stress test using scenarios provided by the agencies.

The annual as-of date of the stress test report is December 31, and the submission deadline for the report is the following July 31.

Currently, the agencies maintain separate, yet identical, report forms (FR Y–16, FDIC DFAST 10–50, and OCC DFAST 10–50B) for the banks, savings associations, and holding companies they supervise to report these company-run stress test results. These annual reports collect quantitative projections of balance sheet assets and liabilities, income, losses, and capital across a range of macroeconomic and financial scenarios as well as qualitative supporting information on the methodologies and processes used to develop those internal projections. The agencies are proposing to combine these separate data collections and designate the combined report as a uniform FFIEC data collection. As part of their proposed adoption of the new FFIEC 016 report, the agencies also are proposing to change the quantitative and qualitative information currently collected in their separate, yet identical, report forms to implement a limited number of revisions that would align the new report with recent burden-reducing changes to the FFIEC 031, FFIEC 041, and the Board's FR Y–9C.[3] These revisions are not expected to change the estimated reporting burden for the proposed new FFIEC 016 compared to the estimated reporting burden for the agencies' existing stress test report forms.

The following revisions to the FFIEC 031, FFIEC 041, and FR Y–9C (as applicable) that took effect March 31, 2017, would affect the proposed FFIEC 016:

(1) On the FFIEC 031 and FFIEC 041 Schedule RI, Memorandum item 14.a, and on the FR Y–9C Schedule HI, Memorandum item 17(a), ''Total other-than-temporary impairment losses,'' was removed, but institutions continue to report other-than-temporary impairment losses recognized in earnings on the FFIEC 031 and FFIEC 041 Schedule RI, Memorandum item 14, and the FR Y–9C Schedule HI, Memorandum item 17. The agencies propose for the new FFIEC 016 report form and instructions to replace line item 25, ''Total other-than-temporary impairment losses,'' on each Income Statement scenario schedule with ''Other-than-temporary impairment losses on held-to-maturity and available-for-sale debt securities

[1] 12 CFR part 46 (OCC); 12 CFR part 252, subpart B (Board); 12 CFR part 325, subpart C (FDIC).

[2] 12 CFR part 46 (OCC); 12 CFR part 252, subpart B (Board); 12 CFR part 325, subpart C (FDIC).

[3] FFIEC 031 and FFIEC 041 Consolidated Reports of Condition and Income (OMB Control Nos.: OCC, 1557–0081; Board, 7100–0036; and FDIC, 3064–0052): See 81 FR 45357 (July 13, 2016) and 82 FR 2444 (January 9, 2017); FR Y–9C Consolidated Financial Statements for Holding Companies (OMB Control No.: Board, 7100–0128): See 81 FR 62129 (September 8, 2016).

recognized in earnings'' as defined in FFIEC 031 and FFIEC 041 Schedule RI, Memorandum item 14, and FR Y–9C Schedule HI, Memorandum item 17.

(2) On the FFIEC 031 and FFIEC 041 Schedule RC–E, Part I, Memorandum items 1.c.(1), ''Brokered deposits of less than $100,000,'' and 1.c.(2), ''Brokered deposits of $100,000 through $250,000 and certain brokered retirement deposit accounts,'' were combined into a single item, Memorandum item 1.c, ''Brokered deposits of $250,000 or less (fully insured brokered deposits).'' The agencies propose for the new FFIEC 016 report form and instructions to align its Balance Sheet line items 32 and 33 for retail and wholesale funding calculations, respectively, with the updated FFIEC 031 and FFIEC 041 Schedule RC–E, Part I, Memorandum item 1.c, ''Brokered deposits of $250,000 or less (fully insured brokered deposits).''

(3) On Schedule RC–M of the FFIEC 031 and FFIEC 041, items for the amount of loans covered by FDIC loss-sharing agreements in the following loan categories were removed and combined with existing Schedule RC–M, item 13.a.(5), ''All other loans and all leases'' covered by such agreements: Item 13.a.(2), ''Loans to finance agricultural production and other loans to farmers''; item 13.a.(3), ''Commercial and industrial loans''; item 13.a.(4)(a), ''Credit cards''; item 13.a.(4)(b), ''Automobile loans''; and item 13.a.(4)(c), ''Other (includes revolving credit plans other than credit cards, and other consumer loans).'' In order to keep the data collection uniform and comparable across types of reporting institutions, the agencies propose for the new FFIEC 016 report form and instructions to discontinue the deduction of loans covered by FDIC loss-sharing agreements from each of the loan categories collected in Balance Sheet line items 1 through 13. In addition, in the proposed new FFIEC 016 report form, existing Balance Sheet line item 14, ''Loans covered by FDIC loss-sharing agreements,'' will be retained.

In addition, the agencies are proposing to have reporting institutions provide their LEI on the FFIEC 016 report form, if they have one. The LEI is a 20-digit alpha-numeric code that uniquely identifies entities that engage in financial transactions. The recent financial crisis spurred the development of a Global LEI System (GLEIS). Internationally, regulators and market participants have recognized the importance of the LEI as a key improvement in financial data systems. The Group of Twenty (G–20) nations directed the Financial Stability Board (FSB) to lead the coordination of international regulatory work and deliver concrete recommendations on the GLEIS by mid-2012, which in turn were endorsed by the G–20 later that same year. In January 2013, the LEI Regulatory Oversight Committee (ROC), including participation by regulators from around the world, was established to oversee the GLEIS on an interim basis. With the establishment of the full Global LEI Foundation in 2014, the ROC continues to review and develop broad policy standards for LEIs. The OCC, the Board, and the FDIC are all members of the ROC.

The LEI system is designed to facilitate several financial stability objectives, including the provision of higher quality and more accurate financial data. In the United States, the Financial Stability Oversight Council (FSOC) has recommended that regulators and market participants continue to work together to improve the quality and comprehensiveness of financial data both nationally and globally. In this regard, the FSOC also has recommended that its member agencies promote the use of the LEI in reporting requirements and rulemakings, where appropriate.[4]

With respect to the FFIEC 016, the agencies are proposing to have reporting institutions provide their LEI on the cover page of this new report once it is implemented, if a reporting institution has an LEI. A reporting institution that does not have an LEI would not be required to obtain one for purposes of reporting it on the FFIEC 016.

The uniform FFIEC 016 report would be collected through the application currently used to collect the agencies' separate stress test reporting forms, the Federal Reserve's Reporting Central application. The agencies believe that developing a uniform report under the FFIEC reporting structure will promote uniform standards and reporting across the agencies, which is consistent with the function of the FFIEC.[5] The proposed FFIEC 016 information collection would satisfy each agency's company-run stress-testing requirements, while ensuring consistency and comparability of the stress-testing information across institutions. The change from three separate agency-specific reports to an interagency FFIEC report is expected to be a seamless change for institutions with $10 to $50 billion in assets currently reporting annual Dodd-Frank Act stress-testing information. The change also would ensure that future collections of this information remain uniform across the agencies.

The proposed FFIEC 016 report form would take effect as of December 31, 2017. The first annual filing deadline for the FFIEC 016 report form would be July 31, 2018.

[4] Financial Stability Oversight Council 2015 Annual Report, page 14, *http://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/2015%20FSOC%20Annual%20Report.pdf.*

[5] See 12 U.S.C. 3305(c).

II. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, 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 collections 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 the information.

Comments submitted in response to the joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: October 2, 2017.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, September 29, 2017.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, this 27th day of September 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–21571 Filed 10–5–17; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning October 1, 2017, and ending on December 31, 2017, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 1.06 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 26106–1328. You can download this notice at the following Internet addresses: *http://www.treasury.gov* or *http://www.federalregister.gov*.

DATES: Applicable October 1, 2017 to December 31, 2017.

FOR FURTHER INFORMATION CONTACT: Adam Charlton, Manager, Federal Borrowings Branch, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 26106–1328, (304) 480–5248; Sam Doak, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.'' 8 U.S.C. 1363(a). Related Federal regulations state that ''Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.'' 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545] In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the *TreasuryDirect* Web site.

Gary Grippo,

Deputy Assistant Secretary for Public Finance.

[FR Doc. 2017–21524 Filed 10–5–17; 8:45 am]

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